

104TH CONGRESS
1ST SESSION

H.R. 2586

IN THE SENATE OF THE UNITED STATES

NOVEMBER 9, 1995

Received

AN ACT

To provide for a temporary increase in the public debt limit,
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. TEMPORARY INCREASE IN PUBLIC DEBT LIMIT.**

2 Subsection (b) of section 3101 of title 31, United
3 States Code, is amended by adding at the end the follow-
4 ing new sentence: “During the period after the date of
5 the enactment of this sentence, the preceding sentence
6 shall be applied by substituting for the dollar amount con-
7 tained therein—

8 “(1) ‘\$4,950,000,000,000’ for the portion of
9 such period before December 13, 1995, and

10 “(2) ‘\$4,800,000,000,000’ after December 12,
11 1995.”

12 **SEC. 2. APPLICABILITY OF PUBLIC DEBT LIMIT TO FED-**
13 **ERAL TRUST FUNDS AND OTHER FEDERAL**
14 **ACCOUNTS.**

15 (a) PROTECTION OF FEDERAL FUNDS.—Notwith-
16 standing any other provision of law—

17 (1) no officer or employee of the United States
18 may—

19 (A) delay the deposit of any amount into
20 (or delay the credit of any amount to) any Fed-
21 eral fund or otherwise vary from the normal
22 terms, procedures, or timing for making such
23 deposits or credits, or

24 (B) refrain from the investment in public
25 debt obligations of amounts in any Federal
26 fund,

1 if a purpose of such action or inaction is to not in-
2 crease the amount of outstanding public debt obliga-
3 tions, and

4 (2) no officer or employee of the United States
5 may disinvest amounts in any Federal fund which
6 are invested in public debt obligations if a purpose
7 of the disinvestment is to reduce the amount of out-
8 standing public debt obligations.

9 (b) PROTECTION OF BENEFITS AND EXPENDITURES
10 FOR ADMINISTRATIVE EXPENSES.—

11 (1) IN GENERAL.—Notwithstanding subsection
12 (a), during any period for which cash benefits or ad-
13 ministrative expenses would not otherwise be payable
14 from a covered benefits fund by reason of an inabil-
15 ity to issue further public debt obligations because
16 of the applicable public debt limit, public debt obli-
17 gations held by such covered benefits fund shall be
18 sold or redeemed only for the purpose of making
19 payment of such benefits or administrative expenses
20 and only to the extent cash assets of the covered
21 benefits fund are not available from month to month
22 for making payment of such benefits or administra-
23 tive expenses.

24 (2) ISSUANCE OF CORRESPONDING DEBT.—For
25 purposes of undertaking the sale or redemption of

1 public debt obligations held by a covered benefits
2 fund pursuant to paragraph (1), the Secretary of the
3 Treasury may issue corresponding public debt obligations to the public, in order to obtain the cash
4 necessary for payment of benefits or administrative
5 expenses from such covered benefits fund, notwithstanding the public debt limit.

8 (3) ADVANCE NOTICE OF SALE OR REDEMPTION.—Not less than 3 days prior to the date on
9 which, by reason of the public debt limit, the Secretary of the Treasury expects to undertake a sale
10 or redemption authorized under paragraph (1), the Secretary of the Treasury shall report to each House
11 of the Congress and to the Comptroller General of the United States regarding the expected sale or redemption.
12 Upon receipt of such report, the Comptroller General shall review the extent of compliance
13 with subsection (a) and paragraphs (1) and (2) of this subsection and shall issue such findings and recommendations to each House of the Congress as the
14 Comptroller General considers necessary and appropriate.

23 (c) PUBLIC DEBT OBLIGATION.—For purposes of
24 this section, the term “public debt obligation” means any

1 obligation subject to the public debt limit established
2 under section 3101 of title 31, United States Code.

3 (d) FEDERAL FUND.—For purposes of this section,
4 the term “Federal fund” means any Federal trust fund
5 or Government account established pursuant to Federal
6 law to which the Secretary of the Treasury has issued or
7 is expressly authorized by law directly to issue obligations
8 under chapter 31 of title 31, United States Code, in re-
9 spect of public money, money otherwise required to be de-
10 posited in the Treasury, or amounts appropriated.

11 (e) COVERED BENEFITS FUND.—For purposes of
12 subsection (b), the term “covered benefits fund” means
13 any Federal fund from which cash benefits are payable
14 by law in the form of retirement benefits, separation pay-
15 ments, life or disability insurance benefits, or dependent’s
16 or survivor’s benefits, including (but not limited to) the
17 following:

18 (1) the Federal Old-Age and Survivors Insur-
19 ance Trust Fund;

20 (2) the Federal Disability Insurance Trust
21 Fund;

22 (3) the Civil Service Retirement and Disability
23 Fund;

24 (4) the Government Securities Investment
25 Fund;

1 (5) the Department of Defense Military Retire-
2 ment Fund;

3 (6) the Unemployment Trust Fund;

4 (7) each of the railroad retirement funds and
5 accounts;

6 (8) the Department of Defense Education Ben-
7 efits Fund and the Post-Vietnam Era Veterans Edu-
8 cation Fund; and

9 (9) the Black Lung Disability Trust Fund.

10 **SEC. 3. CONFORMING AMENDMENTS.**

11 Subsections (j), (k), and (l) of section 8348 of title
12 5, United States Code, and subsections (g) and (h) of sec-
13 tion 8438 of such title are hereby repealed.

14 **SEC. 4. COMMITMENT TO A SEVEN-YEAR BALANCED BUDG-**
15 **ET.**

16 (a) With the enactment of this Act the President
17 and the Congress commit to enacting legislation in cal-
18 endar year 1995 to achieve a balanced budget, as scored
19 by the non-partisan Congressional Budget Office, not
20 later than the fiscal year 2002.

21 (b) The Congress affirms that it will not enact legis-
22 lation providing for a further increase in the permanent
23 statutory limit on the public debt unless the President
24 signs into law the balanced budget legislation referred to
25 in subsection (a).

1 **SEC. 5. MEDICARE COVERAGE OF CERTAIN ANTI-CANCER**
 2 **DRUG TREATMENTS.**

3 (a) COVERAGE OF CERTAIN SELF-ADMINISTERED
 4 ANTICANCER DRUGS.—Section 1861(s)(2)(Q) of the So-
 5 cial Security Act (42 U.S.C. 1395x(s)(2)(Q)) is amend-
 6 ed—

7 (1) by striking “(Q)” and inserting “(Q)(i)”; and

8 (2) by striking the semicolon at the end and in-
 9 serting “, and”; and

10 (3) by adding at the end the following:

11 “(ii) an oral drug (which is approved by the Federal
 12 Food and Drug Administration) prescribed for use as an
 13 anticancer nonsteroidal antiestrogen for the treatment of
 14 breast cancer or nonsteroidal antiandrogen agent for the
 15 treatment of prostate cancer;”.

16 (b) UNIFORM COVERAGE OF ANTICANCER DRUGS IN
 17 ALL SETTINGS.—Section 1861(t)(2)(A) of such Act (42
 18 U.S.C. 1395x(t)(2)(A)) is amended by adding (including
 19 a nonsteroidal antiestrogen or nonsteroidal antiandrogen
 20 regimen)” after “regimen”.

21 (c) CONFORMING AMENDMENT.—Section
 22 1834(j)(5)(F)(iv) of such Act (42 U.S.C.
 23 1395m(j)(5)(F)(iv)) is amended by striking “prescribed
 24 for use” and all that follows through “1861(s)(2)(Q))”
 25 and inserting “described in section 1861(s)(2)(Q))”.

1 (d) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to drugs furnished on or after the
 3 date of the enactment of this section.

4 **TITLE I—HABEAS CORPUS REFORM**

5 **SEC. 101. FILING DEADLINES.**

6 Section 2244 of title 28, United States Code, is
 7 amended by adding at the end the following new sub-
 8 section:

9 “(d)(1) A 1-year period of limitation shall apply to
 10 an application for a writ of habeas corpus by a person
 11 in custody pursuant to the judgment of a State court. The
 12 limitation period shall run from the latest of—

13 “(A) the date on which the judgment became
 14 final by the conclusion of direct review or the expira-
 15 tion of the time for seeking such review;

16 “(B) the date on which the impediment to filing
 17 an application created by State action in violation of
 18 the Constitution or laws of the United States is re-
 19 moved, if the applicant was prevented from filing by
 20 such State action;

21 “(C) the date on which the constitutional right
 22 asserted was initially recognized by the Supreme
 23 Court, if the right has been newly recognized by the
 24 Supreme Court and made retroactively applicable to
 25 cases on collateral review; or

1 “(D) the date on which the factual predicate of
2 the claim or claims presented could have been dis-
3 covered through the exercise of due diligence.

4 “(2) The time during which a properly filed applica-
5 tion for State post-conviction or other collateral review
6 with respect to the pertinent judgment or claim shall not
7 be counted toward any period of limitation under this sub-
8 section.”.

9 **SEC. 102. APPEAL.**

10 Section 2253 of title 28, United States Code, is
11 amended to read as follows:

12 **“§ 2253. Appeal**

13 “(a) In a habeas corpus proceeding or a proceeding
14 under section 2255 before a district judge, the final order
15 shall be subject to review, on appeal, by the court of ap-
16 peals for the circuit in which the proceeding is held.

17 “(b) There shall be no right of appeal from a final
18 order in a proceeding to test the validity of a warrant to
19 remove to another district or place for commitment or trial
20 a person charged with a criminal offense against the Unit-
21 ed States, or to test the validity of such person’s detention
22 pending removal proceedings.

23 “(c)(1) Unless a circuit justice or judge issues a cer-
24 tificate of appealability, an appeal may not be taken to
25 the court of appeals from—

1 “(A) the final order in a habeas corpus proceed-
 2 ing in which the detention complained of arises out
 3 of process issued by a State court; or

4 “(B) the final order in a proceeding under sec-
 5 tion 2255.

6 “(2) A certificate of appealability may issue under
 7 paragraph (1) only if the applicant has made a substantial
 8 showing of the denial of a constitutional right.

9 “(3) The certificate of appealability under paragraph
 10 (1) shall indicate which specific issue or issues satisfy the
 11 showing required by paragraph (2).”.

12 **SEC. 103. AMENDMENT OF FEDERAL RULES OF APPELLATE**
 13 **PROCEDURE.**

14 Rule 22 of the Federal Rules of Appellate Procedure
 15 is amended to read as follows:

16 **“Rule 22. Habeas corpus and section 2255 proceed-**
 17 **ings**

18 “(a) APPLICATION FOR THE ORIGINAL WRIT.—An
 19 application for a writ of habeas corpus shall be made to
 20 the appropriate district court. If application is made to
 21 a circuit judge, the application shall be transferred to the
 22 appropriate district court. If an application is made to or
 23 transferred to the district court and denied, renewal of the
 24 application before a circuit judge shall not be permitted.
 25 The applicant may, pursuant to section 2253 of title 28,

1 United States Code, appeal to the appropriate court of ap-
2 peals from the order of the district court denying the writ.

3 “(b) CERTIFICATE OF APPEALABILITY.—In a habeas
4 corpus proceeding in which the detention complained of
5 arises out of process issued by a State court, an appeal
6 by the applicant for the writ may not proceed unless a
7 district or a circuit judge issues a certificate of
8 appealability pursuant to section 2253(c) of title 28, Unit-
9 ed States Code. If an appeal is taken by the applicant,
10 the district judge who rendered the judgment shall either
11 issue a certificate of appealability or state the reasons why
12 such a certificate should not issue. The certificate or the
13 statement shall be forwarded to the court of appeals with
14 the notice of appeal and the file of the proceedings in the
15 district court. If the district judge has denied the certifi-
16 cate, the applicant for the writ may then request issuance
17 of the certificate by a circuit judge. If such a request is
18 addressed to the court of appeals, it shall be deemed ad-
19 dressed to the judges thereof and shall be considered by
20 a circuit judge or judges as the court deems appropriate.
21 If no express request for a certificate is filed, the notice
22 of appeal shall be deemed to constitute a request ad-
23 dressed to the judges of the court of appeals. If an appeal
24 is taken by a State or its representative, a certificate of
25 appealability is not required.”.

1 **SEC. 104. SECTION 2254 AMENDMENTS.**

2 Section 2254 of title 28, United States Code, is
3 amended—

4 (1) by amending subsection (b) to read as fol-
5 lows:

6 “(b)(1) An application for a writ of habeas corpus
7 on behalf of a person in custody pursuant to the judgment
8 of a State court shall not be granted unless it appears
9 that—

10 “(A) the applicant has exhausted the remedies
11 available in the courts of the State; or

12 “(B)(i) there is an absence of available State
13 corrective process; or

14 “(ii) circumstances exist that render such proc-
15 ess ineffective to protect the rights of the applicant.

16 “(2) An application for a writ of habeas corpus may
17 be denied on the merits, notwithstanding the failure of the
18 applicant to exhaust the remedies available in the courts
19 of the State.

20 “(3) A State shall not be deemed to have waived the
21 exhaustion requirement or be estopped from reliance upon
22 the requirement unless the State, through counsel, ex-
23 pressly waives the requirement.”;

24 (2) by redesignating subsections (d), (e), and
25 (f) as subsections (e), (f), and (g), respectively;

1 (3) by inserting after subsection (c) the follow-
2 ing new subsection:

3 “(d) An application for a writ of habeas corpus on
4 behalf of a person in custody pursuant to the judgment
5 of a State court shall not be granted with respect to any
6 claim that was adjudicated on the merits in State court
7 proceedings unless the adjudication of the claim—

8 “(1) resulted in a decision that was contrary to,
9 or involved an unreasonable application of, clearly
10 established Federal law, as determined by the Su-
11 preme Court of the United States; or

12 “(2) resulted in a decision that was based on an
13 unreasonable determination of the facts in light of
14 the evidence presented in the State court proceed-
15 ing.”;

16 (4) by amending subsection (e), as redesignated
17 by paragraph (2), to read as follows:

18 “(e)(1) In a proceeding instituted by an application
19 for a writ of habeas corpus by a person in custody pursu-
20 ant to the judgment of a State court, a determination of
21 a factual issue made by a State court shall be presumed
22 to be correct. The applicant shall have the burden of re-
23 butting the presumption of correctness by clear and con-
24 vincing evidence.

1 “(2) If the applicant has failed to develop the factual
2 basis of a claim in State court proceedings, the court shall
3 not hold an evidentiary hearing on the claim unless the
4 applicant shows that—

5 “(A) the claim relies on—

6 “(i) a new rule of constitutional law, made
7 retroactive to cases on collateral review by the
8 Supreme Court, that was previously unavail-
9 able; or

10 “(ii) a factual predicate that could not
11 have been previously discovered through the ex-
12 ercise of due diligence; and

13 “(B) the facts underlying the claim would be
14 sufficient to establish by clear and convincing evi-
15 dence that but for constitutional error, no reasonable
16 factfinder would have found the applicant guilty of
17 the underlying offense.”; and

18 (5) by adding at the end the following new sub-
19 sections:

20 “(h) Except as provided in title 21, United States
21 Code, section 848, in all proceedings brought under this
22 section, and any subsequent proceedings on review, the
23 court may appoint counsel for an applicant who is or be-
24 comes financially unable to afford counsel, except as pro-
25 vided by a rule promulgated by the Supreme Court pursu-

1 ant to statutory authority. Appointment of counsel under
2 this section shall be governed by section 3006A of title
3 18.

4 “(i) The ineffectiveness or incompetence of counsel
5 during Federal or State collateral post-conviction proceed-
6 ings shall not be a ground for relief in a proceeding arising
7 under section 2254.”.

8 **SEC. 105. SECTION 2255 AMENDMENTS.**

9 Section 2255 of title 28, United States Code, is
10 amended—

11 (1) by striking the second and fifth undesig-
12 nated paragraphs; and

13 (2) by adding at the end the following new un-
14 designated paragraphs:

15 “A 1-year period of limitation shall apply to a motion
16 under this section. The limitation period shall run from
17 the latest of—

18 “(1) the date on which the judgment of convic-
19 tion becomes final;

20 “(2) the date on which the impediment to mak-
21 ing a motion created by governmental action in vio-
22 lation of the Constitution or laws of the United
23 States is removed, if the movant was prevented from
24 making a motion by such governmental action;

1 “(3) the date on which the right asserted was
2 initially recognized by the Supreme Court, if that
3 right has been newly recognized by the Supreme
4 Court and made retroactively applicable to cases on
5 collateral review; or

6 “(4) the date on which the facts supporting the
7 claim or claims presented could have been discovered
8 through the exercise of due diligence.

9 “Except as provided in title 21, United States Code,
10 section 848, in all proceedings brought under this section,
11 and any subsequent proceedings on review, the court may
12 appoint counsel for a movant who is or becomes financially
13 unable to afford counsel shall be in the discretion of the
14 court, except as provided by a rule promulgated by the
15 Supreme Court pursuant to statutory authority. Appoint-
16 ment of counsel under this section shall be governed by
17 section 3006A of title 18.

18 “A second or successive motion must be certified as
19 provided in section 2244 by a panel of the appropriate
20 court of appeals to contain—

21 “(1) newly discovered evidence that, if proven
22 and viewed in light of the evidence as a whole, would
23 be sufficient to establish by clear and convincing evi-
24 dence that no reasonable factfinder would have
25 found the movant guilty of the offense; or

1 “(2) a new rule of constitutional law, made ret-
2 roactive to cases on collateral review by the Supreme
3 Court, that was previously unavailable.”.

4 **SEC. 106. LIMITS ON SECOND OR SUCCESSIVE APPLICA-**
5 **TIONS.**

6 (a) CONFORMING AMENDMENT TO SECTION
7 2244(a).—Section 2244(a) of title 28, United States
8 Code, is amended by striking “and the petition” and all
9 that follows through “by such inquiry.” and inserting “,
10 except as provided in section 2255.”.

11 (b) LIMITS ON SECOND OR SUCCESSIVE APPLICA-
12 TIONS.—Section 2244(b) of title 28, United States Code,
13 is amended to read as follows:

14 “(b)(1) A claim presented in a second or successive
15 habeas corpus application under section 2254 that was
16 presented in a prior application shall be dismissed.

17 “(2) A claim presented in a second or successive ha-
18 beas corpus application under section 2254 that was not
19 presented in a prior application shall be dismissed un-
20 less—

21 “(A) the applicant shows that the claim relies
22 on a new rule of constitutional law, made retroactive
23 to cases on collateral review by the Supreme Court,
24 that was previously unavailable; or

1 “(B)(i) the factual predicate for the claim could
2 not have been discovered previously through the ex-
3 ercise of due diligence; and

4 “(ii) the facts underlying the claim, if proven
5 and viewed in light of the evidence as a whole, would
6 be sufficient to establish by clear and convincing evi-
7 dence that, but for constitutional error, no reason-
8 able factfinder would have found the applicant guilty
9 of the underlying offense.

10 “(3)(A) Before a second or successive application per-
11 mitted by this section is filed in the district court, the ap-
12 plicant shall move in the appropriate court of appeals for
13 an order authorizing the district court to consider the ap-
14 plication.

15 “(B) A motion in the court of appeals for an order
16 authorizing the district court to consider a second or suc-
17 cessive application shall be determined by a three-judge
18 panel of the court of appeals.

19 “(C) The court of appeals may authorize the filing
20 of a second or successive application only if it determines
21 that the application makes a prima facie showing that the
22 application satisfies the requirements of this subsection.

23 “(D) The court of appeals shall grant or deny the
24 authorization to file a second or successive application not
25 later than 30 days after the filing of the motion.

1 “(E) The grant or denial of an authorization by a
 2 court of appeals to file a second or successive application
 3 shall not be appealable and shall not be the subject of a
 4 petition for rehearing or for a writ of certiorari.

5 “(4) A district court shall dismiss any claim pre-
 6 sented in a second or successive application that the court
 7 of appeals has authorized to be filed unless the applicant
 8 shows that the claim satisfies the requirements of this sec-
 9 tion.”.

10 **SEC. 107. DEATH PENALTY LITIGATION PROCEDURES.**

11 (a) ADDITION OF CHAPTER TO TITLE 28, UNITED
 12 STATES CODE.—Title 28, United States Code, is amended
 13 by inserting after chapter 153 the following new chapter:

14 **“CHAPTER 154—SPECIAL HABEAS CORPUS**
 15 **PROCEDURES IN CAPITAL CASES**

“Sec.

“2261. Prisoners in State custody subject to capital sentence; appointment of
 counsel; requirement of rule of court or statute; procedures for
 appointment.

“2262. Mandatory stay of execution; duration; limits on stays of execution; suc-
 cessive petitions.

“2263. Filing of habeas corpus application; time requirements; tolling rules.

“2264. Scope of Federal review; district court adjudications.

“2265. Application to State unitary review procedure.

“2266. Limitation periods for determining applications and motions.

1 **“§ 2261. Prisoners in State custody subject to capital**
2 **sentence; appointment of counsel; re-**
3 **quirement of rule of court or statute; pro-**
4 **cedures for appointment**

5 “(a) This chapter shall apply to cases arising under
6 section 2254 brought by prisoners in State custody who
7 are subject to a capital sentence. It shall apply only if the
8 provisions of subsections (b) and (c) are satisfied.

9 “(b) This chapter is applicable if a State establishes
10 by statute, rule of its court of last resort, or by another
11 agency authorized by State law, a mechanism for the ap-
12 pointment, compensation, and payment of reasonable liti-
13 gation expenses of competent counsel in State post-convic-
14 tion proceedings brought by indigent prisoners whose cap-
15 ital convictions and sentences have been upheld on direct
16 appeal to the court of last resort in the State or have oth-
17 erwise become final for State law purposes. The rule of
18 court or statute must provide standards of competency for
19 the appointment of such counsel.

20 “(c) Any mechanism for the appointment, compensa-
21 tion, and reimbursement of counsel as provided in sub-
22 section (b) must offer counsel to all State prisoners under
23 capital sentence and must provide for the entry of an
24 order by a court of record—

25 “(1) appointing one or more counsels to rep-
26 resent the prisoner upon a finding that the prisoner

1 is indigent and accepted the offer or is unable com-
2 petently to decide whether to accept or reject the
3 offer;

4 “(2) finding, after a hearing if necessary, that
5 the prisoner rejected the offer of counsel and made
6 the decision with an understanding of its legal con-
7 sequences; or

8 “(3) denying the appointment of counsel upon
9 a finding that the prisoner is not indigent.

10 “(d) No counsel appointed pursuant to subsections
11 (b) and (c) to represent a State prisoner under capital
12 sentence shall have previously represented the prisoner at
13 trial or on direct appeal in the case for which the appoint-
14 ment is made unless the prisoner and counsel expressly
15 request continued representation.

16 “(e) The ineffectiveness or incompetence of counsel
17 during State or Federal post-conviction proceedings in a
18 capital case shall not be a ground for relief in a proceeding
19 arising under section 2254. This limitation shall not pre-
20 clude the appointment of different counsel, on the court’s
21 own motion or at the request of the prisoner, at any phase
22 of State or Federal post-conviction proceedings on the
23 basis of the ineffectiveness or incompetence of counsel in
24 such proceedings.

1 **“§ 2262. Mandatory stay of execution; duration; limits**
2 **on stays of execution; successive peti-**
3 **tions**

4 “(a) Upon the entry in the appropriate State court
5 of record of an order under section 2261(c), a warrant
6 or order setting an execution date for a State prisoner
7 shall be stayed upon application to any court that would
8 have jurisdiction over any proceedings filed under section
9 2254. The application shall recite that the State has in-
10 voked the post-conviction review procedures of this chapter
11 and that the scheduled execution is subject to stay.

12 “(b) A stay of execution granted pursuant to sub-
13 section (a) shall expire if—

14 “(1) a State prisoner fails to file a habeas cor-
15 pus application under section 2254 within the time
16 required in section 2263;

17 “(2) before a court of competent jurisdiction, in
18 the presence of counsel, unless the prisoner has com-
19 petently and knowingly waived such counsel, and
20 after having been advised of the consequences, a
21 State prisoner under capital sentence waives the
22 right to pursue habeas corpus review under section
23 2254; or

24 “(3) a State prisoner files a habeas corpus peti-
25 tion under section 2254 within the time required by
26 section 2263 and fails to make a substantial showing

1 of the denial of a Federal right or is denied relief
2 in the district court or at any subsequent stage of
3 review.

4 “(c) If one of the conditions in subsection (b) has
5 occurred, no Federal court thereafter shall have the au-
6 thority to enter a stay of execution in the case, unless the
7 court of appeals approves the filing of a second or succes-
8 sive application under section 2244(b).

9 **“§ 2263. Filing of habeas corpus application; time re-**
10 **quirements; tolling rules**

11 “(a) Any application under this chapter for habeas
12 corpus relief under section 2254 must be filed in the ap-
13 propriate district court not later than 180 days after final
14 State court affirmance of the conviction and sentence on
15 direct review or the expiration of the time for seeking such
16 review.

17 “(b) The time requirements established by subsection
18 (a) shall be tolled—

19 “(1) from the date that a petition for certiorari
20 is filed in the Supreme Court until the date of final
21 disposition of the petition if a State prisoner files
22 the petition to secure review by the Supreme Court
23 of the affirmance of a capital sentence on direct re-
24 view by the court of last resort of the State or other
25 final State court decision on direct review;

1 “(2) from the date on which the first petition
2 for post-conviction review or other collateral relief is
3 filed until the final State court disposition of such
4 petition; and

5 “(3) during an additional period not to exceed
6 30 days, if—

7 “(A) a motion for an extension of time is
8 filed in the Federal district court that would
9 have jurisdiction over the case upon the filing
10 of a habeas corpus application under section
11 2254; and

12 “(B) a showing of good cause is made for
13 the failure to file the habeas corpus application
14 within the time period established by this sec-
15 tion.

16 **“§ 2264. Scope of Federal review; district court adju-**
17 **dications**

18 “(a) Whenever a State prisoner under capital sen-
19 tence files a petition for habeas corpus relief to which this
20 chapter applies, the district court shall only consider a
21 claim or claims that have been raised and decided on the
22 merits in the State courts, unless the failure to raise the
23 claim properly is—

24 “(1) the result of State action in violation of
25 the Constitution or laws of the United States;

1 “(2) the result of the Supreme Court recogni-
2 tion of a new Federal right that is made retro-
3 actively applicable; or

4 “(3) based on a factual predicate that could not
5 have been discovered through the exercise of due
6 diligence in time to present the claim for State or
7 Federal post-conviction review.

8 “(b) Following review subject to subsections (a), (d),
9 and (e) of section 2254, the court shall rule on the claims
10 properly before it.

11 **“§ 2265. Application to State unitary review proce-**
12 **dure**

13 “(a) For purposes of this section, a ‘unitary review’
14 procedure means a State procedure that authorizes a per-
15 son under sentence of death to raise, in the course of di-
16 rect review of the judgment, such claims as could be raised
17 on collateral attack. This chapter shall apply, as provided
18 in this section, in relation to a State unitary review proce-
19 dure if the State establishes by rule of its court of last
20 resort or by statute a mechanism for the appointment,
21 compensation, and payment of reasonable litigation ex-
22 penses of competent counsel in the unitary review proceed-
23 ings, including expenses relating to the litigation of collat-
24 eral claims in the proceedings. The rule of court or statute

1 must provide standards of competency for the appoint-
2 ment of such counsel.

3 “(b) To qualify under this section, a unitary review
4 procedure must include an offer of counsel following trial
5 for the purpose of representation on unitary review, and
6 entry of an order, as provided in section 2261(c), concern-
7 ing appointment of counsel or waiver or denial of appoint-
8 ment of counsel for that purpose. No counsel appointed
9 to represent the prisoner in the unitary review proceedings
10 shall have previously represented the prisoner at trial in
11 the case for which the appointment is made unless the
12 prisoner and counsel expressly request continued represen-
13 tation.

14 “(c) Sections 2262, 2263, 2264, and 2266 shall apply
15 in relation to cases involving a sentence of death from any
16 State having a unitary review procedure that qualifies
17 under this section. References to State ‘post-conviction re-
18 view’ and ‘direct review’ in such sections shall be under-
19 stood as referring to unitary review under the State proce-
20 dure. The reference in section 2262(a) to ‘an order under
21 section 2261(c)’ shall be understood as referring to the
22 post-trial order under subsection (b) concerning represen-
23 tation in the unitary review proceedings, but if a tran-
24 script of the trial proceedings is unavailable at the time
25 of the filing of such an order in the appropriate State

1 court, then the start of the 180-day limitation period
2 under section 2263 shall be deferred until a transcript is
3 made available to the prisoner or counsel of the prisoner.

4 **“§ 2266. Limitation periods for determining applica-**
5 **tions and motions**

6 “(a) The adjudication of any application under sec-
7 tion 2254 that is subject to this chapter, and the adjudica-
8 tion of any motion under section 2255 by a person under
9 sentence of death, shall be given priority by the district
10 court and by the court of appeals over all noncapital mat-
11 ters.

12 “(b)(1)(A) A district court shall render a final deter-
13 mination and enter a final judgment on any application
14 for a writ of habeas corpus brought under this chapter
15 in a capital case not later than 180 days after the date
16 on which the application is filed.

17 “(B) A district court shall afford the parties at least
18 120 days in which to complete all actions, including the
19 preparation of all pleadings and briefs, and if necessary,
20 a hearing, prior to the submission of the case for decision.

21 “(C)(i) A district court may delay for not more than
22 one additional 30-day period beyond the period specified
23 in subparagraph (A), the rendering of a determination of
24 an application for a writ of habeas corpus if the court is-
25 sues a written order making a finding, and stating the

1 reasons for the finding, that the ends of justice that would
2 be served by allowing the delay outweigh the best interests
3 of the public and the applicant in a speedy disposition of
4 the application.

5 “(ii) The factors, among others, that a court shall
6 consider in determining whether a delay in the disposition
7 of an application is warranted are as follows:

8 “(I) Whether the failure to allow the delay
9 would be likely to result in a miscarriage of justice.

10 “(II) Whether the case is so unusual or so com-
11 plex, due to the number of defendants, the nature of
12 the prosecution, or the existence of novel questions
13 of fact or law, that it is unreasonable to expect ade-
14 quate briefing within the time limitations established
15 by subparagraph (A).

16 “(III) Whether the failure to allow a delay in
17 a case, that, taken as a whole, is not so unusual or
18 so complex as described in subclause (II), but would
19 otherwise deny the applicant reasonable time to ob-
20 tain counsel, would unreasonably deny the applicant
21 or the government continuity of counsel, or would
22 deny counsel for the applicant or the government the
23 reasonable time necessary for effective preparation,
24 taking into account the exercise of due diligence.

1 “(iii) No delay in disposition shall be permissible be-
2 cause of general congestion of the court’s calendar.

3 “(iv) The court shall transmit a copy of any order
4 issued under clause (i) to the Director of the Administra-
5 tive Office of the United States Courts for inclusion in
6 the report under paragraph (5).

7 “(2) The time limitations under paragraph (1) shall
8 apply to—

9 “(A) an initial application for a writ of habeas
10 corpus;

11 “(B) any second or successive application for a
12 writ of habeas corpus; and

13 “(C) any redetermination of an application for
14 a writ of habeas corpus following a remand by the
15 court of appeals or the Supreme Court for further
16 proceedings, in which case the limitation period shall
17 run from the date the remand is ordered.

18 “(3)(A) The time limitations under this section shall
19 not be construed to entitle an applicant to a stay of execu-
20 tion, to which the applicant would otherwise not be enti-
21 tled, for the purpose of litigating any application or ap-
22 peal.

23 “(B) No amendment to an application for a writ of
24 habeas corpus under this chapter shall be permitted after

1 the filing of the answer to the application, except on the
2 grounds specified in section 2244(b).

3 “(4)(A) The failure of a court to meet or comply with
4 a time limitation under this section shall not be a ground
5 for granting relief from a judgment of conviction or sen-
6 tence.

7 “(B) The State may enforce a time limitation under
8 this section by petitioning for a writ of mandamus to the
9 court of appeals. The court of appeals shall act on the
10 petition for a writ or mandamus not later than 30 days
11 after the filing of the petition.

12 “(5)(A) The Administrative Office of United States
13 Courts shall submit to Congress an annual report on the
14 compliance by the district courts with the time limitations
15 under this section.

16 “(B) The report described in subparagraph (A) shall
17 include copies of the orders submitted by the district
18 courts under paragraph (1)(B)(iv).

19 “(c)(1)(A) A court of appeals shall hear and render
20 a final determination of any appeal of an order granting
21 or denying, in whole or in part, an application brought
22 under this chapter in a capital case not later than 120
23 days after the date on which the reply brief is filed, or
24 if no reply brief is filed, not later than 120 days after
25 the date on which the answering brief is filed.

1 “(B)(i) A court of appeals shall decide whether to
2 grant a petition for rehearing or other request for rehear-
3 ing en banc not later than 30 days after the date on which
4 the petition for rehearing is filed unless a responsive
5 pleading is required, in which case the court shall decide
6 whether to grant the petition not later than 30 days after
7 the date on which the responsive pleading is filed.

8 “(ii) If a petition for rehearing or rehearing en banc
9 is granted, the court of appeals shall hear and render a
10 final determination of the appeal not later than 120 days
11 after the date on which the order granting rehearing or
12 rehearing en banc is entered.

13 “(2) The time limitations under paragraph (1) shall
14 apply to—

15 “(A) an initial application for a writ of habeas
16 corpus;

17 “(B) any second or successive application for a
18 writ of habeas corpus; and

19 “(C) any redetermination of an application for
20 a writ of habeas corpus or related appeal following
21 a remand by the court of appeals en banc or the Su-
22 preme Court for further proceedings, in which case
23 the limitation period shall run from the date the re-
24 mand is ordered.

1 “(3) The time limitations under this section shall not
 2 be construed to entitle an applicant to a stay of execution,
 3 to which the applicant would otherwise not be entitled, for
 4 the purpose of litigating any application or appeal.

5 “(4)(A) The failure of a court to meet or comply with
 6 a time limitation under this section shall not be a ground
 7 for granting relief from a judgment of conviction or sen-
 8 tence.

9 “(B) The State may enforce a time limitation under
 10 this section by applying for a writ of mandamus to the
 11 Supreme Court.

12 “(5) The Administrative Office of United States
 13 Courts shall submit to Congress an annual report on the
 14 compliance by the courts of appeals with the time limita-
 15 tions under this section.”.

16 (b) TECHNICAL AMENDMENT.—The part analysis for
 17 part IV of title 28, United States Code, is amended by
 18 adding after the item relating to chapter 153 the following
 19 new item:

**“154. Special habeas corpus procedures in capital
 cases 2261.”.**

20 (c) EFFECTIVE DATE.—Chapter 154 of title 28,
 21 United States Code (as added by subsection (a)) shall
 22 apply to cases pending on or after the date of enactment
 23 of this Act.

1 **SEC. 108. TECHNICAL AMENDMENT.**

2 Section 408(q) of the Controlled Substances Act (21
3 U.S.C. 848(q)) is amended by amending paragraph (9)
4 to read as follows:

5 “(9) Upon a finding that investigative, expert, or
6 other services are reasonably necessary for the representa-
7 tion of the defendant, whether in connection with issues
8 relating to guilt or the sentence, the court may authorize
9 the defendant’s attorneys to obtain such services on behalf
10 of the defendant and, if so authorized, shall order the pay-
11 ment of fees and expenses therefor under paragraph (10).
12 No ex parte proceeding, communication, or request may
13 be considered pursuant to this section unless a proper
14 showing is made concerning the need for confidentiality.
15 Any such proceeding, communication, or request shall be
16 transcribed and made a part of the record available for
17 appellate review.”.

18 **SEC. 109. SEVERABILITY.**

19 If any provision of this title, an amendment made
20 by this title, or the application of such provision or
21 amendment to any person or circumstance is held to be
22 unconstitutional, the remainder of this title, the amend-
23 ments made by this title, and the application of the provi-
24 sions of such to any person or circumstances shall not be
25 affected thereby.

1 **TITLE II—ABOLISHMENT OF**
 2 **DEPARTMENT OF COMMERCE**

3 **SEC. 2001. SHORT TITLE.**

4 This title may be cited as the “Department of Com-
 5 merce Dismantling Act”.

6 **SEC. 2002. TABLE OF CONTENTS.**

7 The table of contents for this title is as follows:

TITLE II—ABOLISHMENT OF DEPARTMENT OF COMMERCE

Sec. 2001. Short title.

Sec. 2002. Table of contents.

Subtitle A—Abolishment of Department of Commerce

Sec. 2101. Abolishment of Department of Commerce.

Sec. 2102. Resolution and termination of Department functions.

Sec. 2103. Responsibilities of the Director of the Office of Management and
 Budget.

Sec. 2104. Personnel.

Sec. 2105. Plans and reports.

Sec. 2106. GAO audit and access to records.

Sec. 2107. Conforming amendments.

Sec. 2108. Privatization framework.

Sec. 2109. Priority placement programs for Federal employees affected by a re-
 duction in force attributable to this title.

Sec. 2110. Funding reductions for transferred functions.

Sec. 2111. Definitions.

Subtitle B—Disposition of Various Programs, Functions, and Agencies of
 Department of Commerce

Sec. 2201. Abolishment of Economic Development Administration and transfer
 of functions.

Sec. 2202. Technology Administration.

Sec. 2203. Reorganization of the Bureau of the Census and the Bureau of Eco-
 nomic Analysis.

Sec. 2204. Terminated functions of NTIA.

Sec. 2205. National Oceanic and Atmospheric Administration.

Sec. 2206. National Scientific, Oceanic, and Atmospheric Administration.

Sec. 2207. Miscellaneous terminations; moratorium on program activities.

Sec. 2208. Effective date.

Subtitle C—Office of United States Trade Representative

CHAPTER 1—GENERAL PROVISIONS

Sec. 2301. Definitions.

CHAPTER 2—OFFICE OF UNITED STATES TRADE REPRESENTATIVE

SUBCHAPTER A—ESTABLISHMENT

- Sec. 2311. Establishment of the Office.
- Sec. 2312. Functions of the USTR.

SUBCHAPTER B—OFFICERS

- Sec. 2321. Deputy Administrator of the Office.
- Sec. 2322. Deputy United States Trade Representatives.
- Sec. 2323. Assistant administrators.
- Sec. 2324. Director General for Export Promotion.
- Sec. 2325. General Counsel.
- Sec. 2326. Inspector General.
- Sec. 2327. Chief Financial Officer.

SUBCHAPTER C—TRANSFERS TO THE OFFICE

- Sec. 2331. Office of the United States Trade Representative.
- Sec. 2332. Transfers from the Department of Commerce.
- Sec. 2333. Trade and Development Agency.
- Sec. 2334. Export-Import Bank.
- Sec. 2335. Overseas Private Investment Corporation.
- Sec. 2336. Consolidation of export promotion and financing activities.
- Sec. 2337. Additional trade functions.

SUBCHAPTER D—ADMINISTRATIVE PROVISIONS

- Sec. 2341. Personnel provisions.
- Sec. 2342. Delegation and assignment.
- Sec. 2343. Succession.
- Sec. 2344. Reorganization.
- Sec. 2345. Rules.
- Sec. 2346. Funds transfer.
- Sec. 2347. Contracts, grants, and cooperative agreements.
- Sec. 2348. Use of facilities.
- Sec. 2349. Gifts and bequests.
- Sec. 2350. Working capital fund.
- Sec. 2351. Service charges.
- Sec. 2352. Seal of office.

SUBCHAPTER E—RELATED AGENCIES

- Sec. 2361. Interagency Trade Organization.
- Sec. 2362. National Security Council.
- Sec. 2363. International Monetary Fund.

SUBCHAPTER F—CONFORMING AMENDMENTS

- Sec. 2371. Amendments to general provisions.
- Sec. 2372. Repeals.
- Sec. 2373. Conforming amendments relating to Executive Schedule positions.

SUBCHAPTER G—MISCELLANEOUS

- Sec. 2381. Effective date.
- Sec. 2382. Interim appointments.
- Sec. 2383. Funding reductions resulting from reorganization.

Subtitle D—Patent and Trademark Office Corporation

Sec. 2401. Short title.

CHAPTER 1—PATENT AND TRADEMARK OFFICE

Sec. 2411. Establishment of Patent and Trademark Office as a Corporation.

Sec. 2412. Powers and duties.

Sec. 2413. Organization and management.

Sec. 2414. Management Advisory Board.

Sec. 2415. Independence from Department of Commerce.

Sec. 2416. Trademark Trial and Appeal Board.

Sec. 2417. Board of Patent Appeals and Interferences.

Sec. 2418. Suits by and against the Corporation.

Sec. 2419. Annual report of Commissioner.

Sec. 2420. Suspension or exclusion from practice.

Sec. 2421. Funding.

Sec. 2422. Audits.

Sec. 2423. Transfers.

CHAPTER 2—EFFECTIVE DATE; TECHNICAL AMENDMENTS

Sec. 2431. Effective date.

Sec. 2432. Technical and conforming amendments.

Subtitle E—Miscellaneous Provisions

Sec. 2501. References.

Sec. 2502. Exercise of authorities.

Sec. 2503. Savings provisions.

Sec. 2504. Transfer of assets.

Sec. 2505. Delegation and assignment.

Sec. 2506. Authority of Director of the Office of Management and Budget with respect to functions transferred.

Sec. 2507. Certain vesting of functions considered transfers.

Sec. 2508. Availability of existing funds.

Sec. 2509. Definitions.

Subtitle F—Citizens Commission on 21st Century Government

Sec. 2601. Short title and purpose.

Sec. 2602. Citizens Commission on 21st Century Government.

Sec. 2603. Department and agency cooperation.

Sec. 2604. Hearings.

Sec. 2605. Commission procedures.

Sec. 2606. Framework for the Federal Government in the 21st century.

Sec. 2607. Proposal for reorganizing the executive branch.

Sec. 2608. Procedures for making recommendations.

Sec. 2609. Congressional consideration of reform proposals.

Sec. 2610. Distribution of assets.

Sec. 2611. Agency defined.

Subtitle A—Abolishment of Department of Commerce

SEC. 2101. ABOLISHMENT OF DEPARTMENT OF COMMERCE.

(a) ABOLISHMENT OF DEPARTMENT.—The Department of Commerce is abolished effective on the abolishment date specified in subsection (c).

(b) TRANSFER OF DEPARTMENT FUNCTIONS TO OMB.—Except as otherwise provided in this title, all functions that immediately before the abolishment date specified in subsection (c) are authorized to be performed by the Secretary of Commerce, any other officer or employee of the Department acting in that capacity, or any agency or office of the Department, are transferred to the Director of the Office of Management and Budget effective on that abolishment date.

(c) ABOLISHMENT DATE.—The abolishment date referred to in subsections (a) and (b) is the earlier of—

(1) the last day of the 6-month period beginning on the date of the enactment of this Act; or

(2) September 30, 1996.

SEC. 2102. RESOLUTION AND TERMINATION OF DEPARTMENT FUNCTIONS.

(a) RESOLUTION OF FUNCTIONS.—During the period beginning on the date of enactment of this Act and ending

1 on the functions termination date specified in subsection
2 (c)—

3 (1) the disposition and resolution of functions
4 of the Department of Commerce shall be completed
5 in accordance with this title; and

6 (2) the Director shall resolve all functions that
7 are transferred to the Director under section
8 2101(b) and are not otherwise continued under this
9 title.

10 (b) TERMINATION OF FUNCTIONS.—All functions
11 that are transferred to the Director under section 2101(b)
12 that are not otherwise continued by this title shall termi-
13 nate on the functions termination date specified in sub-
14 section (c).

15 (c) FUNCTIONS TERMINATION DATE.—The functions
16 termination date referred to in subsections (a) and (b) is
17 the last day of the 3-year period beginning on the date
18 of the enactment of this Act.

19 **SEC. 2103. RESPONSIBILITIES OF THE DIRECTOR OF THE**
20 **OFFICE OF MANAGEMENT AND BUDGET.**

21 (a) IN GENERAL.—The Director of the Office of
22 Management and Budget shall be responsible for the im-
23 plementation of this subtitle, including—

1 (1) the administration and wind-up, during the
2 wind-up period, of all functions transferred to the
3 Director under section 2101(b);

4 (2) the administration and wind-up, during the
5 wind-up period, of any outstanding obligations of the
6 Federal Government under any programs terminated
7 by this title; and

8 (3) taking such other actions as may be nec-
9 essary to wind-up any outstanding affairs of the De-
10 partment of Commerce before the end of the wind-
11 up period.

12 (b) DELEGATION OF FUNCTIONS.—The Director may
13 delegate to any officer of the Office of Management and
14 Budget or to any other Federal department or agency
15 head the performance of the Director's functions under
16 this subtitle, except the Director's planning and reporting
17 responsibilities under section 2105, to the extent that the
18 Director determines that such delegation would further
19 the purposes of this subtitle.

20 (c) TRANSFER OF ASSETS AND PERSONNEL.—In
21 connection with any delegation of functions under sub-
22 section (b), the Director may transfer within the Office
23 or to the department or agency concerned such assets,
24 funds, personnel, records, and other property relating to

1 the delegated function as the Director determines to be
2 appropriate.

3 (d) AUTHORITIES OF THE DIRECTOR.—For purposes
4 of performing the functions of the Director under this sub-
5 title and subject to the availability of appropriations, the
6 Director may—

7 (1) enter into contracts;

8 (2) employ experts and consultants in accord-
9 ance with section 3109 of title 5, United States
10 Code, at rates for individuals not to exceed the per
11 diem rate equivalent to the rate for level IV of the
12 Executive Schedule; and

13 (3) utilize, on a reimbursable basis, the services,
14 facilities, and personnel of other Federal agencies.

15 **SEC. 2104. PERSONNEL.**

16 Effective on the abolishment date specified in section
17 2101(c), there are transferred to the Office all individuals
18 who—

19 (1) immediately before the abolishment date,
20 were officers or employees of the Department of
21 Commerce; and

22 (2) in their capacity as such an officer or em-
23 ployee, performed functions that are transferred to
24 the Director under section 2101(b).

1 **SEC. 2105. PLANS AND REPORTS.**

2 (a) INITIAL IMPLEMENTATION PLAN.—

3 (1) IN GENERAL.—Not later than 90 days after
4 the date of enactment of this Act, the Director shall
5 submit a report, through the President, to the Con-
6 gress specifying those actions taken and necessary to
7 be taken—

8 (A) to resolve those programs and func-
9 tions terminated on the date of enactment of
10 this Act; and

11 (B) to implement the additional transfers
12 and other program dispositions provided for in
13 this title.

14 (2) CONTENTS.—The report shall include—

15 (A) recommendations for additional legisla-
16 tion, if any, needed to reflect or otherwise to
17 implement the abolishments, transfers, termi-
18 nations, and other dispositions of programs and
19 functions under this title; and

20 (B) a description of actions planned and
21 taken to comply with limitations imposed by
22 this Act on future spending for continued func-
23 tions.

24 (b) ANNUAL STATUS REPORTS.—At the end of each
25 of the first, second, and third years following the date of

1 enactment of this Act, the Director shall submit a report,
2 through the President, to the Congress which—

3 (1) specifies the status and progress of actions
4 taken to implement this title and to wind-up the af-
5 fairs of the Department of Commerce by the func-
6 tions termination date specified in section 2102(c);

7 (2) includes any recommendations the Director
8 may have for additional legislation; and

9 (3) describes actions taken to comply with limi-
10 tations imposed by this Act on future spending for
11 continued functions.

12 (c) GAO REPORTS.—Not later than 60 days after is-
13 suance of each report under subsections (a) and (b), the
14 Comptroller General of the United States shall submit to
15 the Congress a report which—

16 (1) evaluates the report under that subsection;
17 and

18 (2) includes any recommendations the Comp-
19 troller General considers appropriate.

20 **SEC. 2106. GAO AUDIT AND ACCESS TO RECORDS.**

21 (a) AUDIT OF PERSONS PERFORMING FUNCTIONS
22 PURSUANT TO THIS ACT.—All agencies, corporations, or-
23 ganizations, and other persons of any description which
24 under the authority of the United States perform any
25 function or activity pursuant to this title shall be subject

1 to audit by the Comptroller General of the United States
2 with respect to such function or activity.

3 (b) AUDIT OF PERSONS PROVIDING CERTAIN GOODS
4 OR SERVICES.—All persons and organizations which, by
5 contract, grant, or otherwise, provide goods or services to,
6 or receive financial assistance from, any agency or other
7 person performing functions or activities under or referred
8 to by this title shall be subject to audit by the Comptroller
9 General of the United States with respect to such provi-
10 sion of goods or services or receipt of financial assistance.

11 (c) PROVISIONS APPLICABLE TO AUDITS UNDER
12 THIS SECTION.—

13 (1) NATURE AND SCOPE OF AUDIT.—The
14 Comptroller General of the United States shall de-
15 termine the nature, scope, terms, and conditions of
16 audits conducted under this section.

17 (2) COORDINATION WITH OTHER PROVISIONS
18 OF LAW.—The authority of the Comptroller General
19 of the United States under this section shall be in
20 addition to any audit authority available to the
21 Comptroller General under other provisions of this
22 title or any other law.

23 (3) RIGHTS OF ACCESS, EXAMINATION, AND
24 COPYING.—The Comptroller General of the United
25 States, and any duly authorized representative of the

1 Comptroller General, shall have access to, and the
2 right to examine and copy, all records and other re-
3 corded information in any form, and to examine any
4 property within the possession or control of any
5 agency or person which is subject to audit under this
6 section, which the Comptroller General considers rel-
7 evant to an audit conducted under this section.

8 (4) ENFORCEMENT OF RIGHT OF ACCESS.—The
9 right of access of the Comptroller General of the
10 United States to information under this section shall
11 be enforceable under section 716 of title 31, United
12 States Code.

13 (5) MAINTENANCE OF CONFIDENTIAL
14 RECORDS.—Section 716(e) of title 31, United States
15 Code, shall apply to information obtained by the
16 Comptroller General under this section.

17 **SEC. 2107. CONFORMING AMENDMENTS.**

18 (a) PRESIDENTIAL SUCCESSION.—Section 19(d)(1)
19 of title 3, United States Code, is amended by striking
20 “Secretary of Commerce,”.

21 (b) EXECUTIVE DEPARTMENTS.—Section 101 of title
22 5, United States Code, is amended by striking the follow-
23 ing item: “The Department of Commerce.”.

1 (c) SECRETARY’S COMPENSATION.—Section 5312 of
2 title 5, United States Code, is amended by striking the
3 following item: “Secretary of Commerce.”.

4 (d) COMPENSATION FOR POSITIONS AT LEVEL III.—
5 Section 5314 of title 5, United States Code, is amended—

6 (1) by striking the following item:

7 “Under Secretary of Commerce, Under Secretary of
8 Commerce for Economic Affairs, Under Secretary of Com-
9 merce for Export Administration and Under Secretary of
10 Commerce for Travel and Tourism.”;

11 (2) by striking the following item:

12 “Under Secretary of Commerce for Oceans and At-
13 mosphere, the incumbent of which also serves as Adminis-
14 trator of the National Oceanic and Atmospheric Adminis-
15 tration.”; and

16 (3) by striking the following item:

17 “Under Secretary of Commerce for Technology.”.

18 (e) COMPENSATION FOR POSITIONS AT LEVEL IV.—
19 Section 5315 of title 5, United States Code, is amended—

20 (1) by striking the following item:

21 “Assistant Secretaries of Commerce (11).”;

22 (2) by striking the following item:

23 “General Counsel of the Department of Commerce.”;

24 (3) by striking the following item:

1 “Assistant Secretary of Commerce for Oceans and
2 Atmosphere, the incumbent of which also serves as Deputy
3 Administrator of the National Oceanic and Atmospheric
4 Administration.”;

5 (4) by striking the following item:

6 “Director, National Institute of Standards and Tech-
7 nology, Department of Commerce.”;

8 (5) by striking the following item:

9 “Inspector General, Department of Commerce.”;

10 (6) by striking the following item:

11 “Chief Financial Officer, Department of Com-
12 merce.”; and

13 (7) in the item relating to the Bureau of the
14 Census, by striking “, Department of Commerce”.

15 (f) COMPENSATION FOR POSITIONS AT LEVEL V.—
16 Section 5316 of title 5, United States Code, is amended—

17 (1) by striking the following item:

18 “Director, United States Travel Service, Department
19 of Commerce.”; and

20 (2) by striking the following item:

21 “National Export Expansion Coordinator, Depart-
22 ment of Commerce.”.

23 (g) INSPECTOR GENERAL ACT OF 1978.—The In-
24 spector General Act of 1978 (5 U.S.C. App.) is amend-
25 ed—

1 (1) in section 9(a)(1), by striking subparagraph
2 (B);

3 (2) in section 11(1), by striking “Commerce,”;
4 and

5 (3) in section 11(2), by striking “Commerce,”.

6 (h) EFFECTIVE DATE.—The amendments made by
7 this section shall be effective on the abolishment date spec-
8 ified in section 2101(c).

9 **SEC. 2108. PRIVATIZATION FRAMEWORK.**

10 (a) IN GENERAL.—The Office of Management and
11 Budget shall privatize each function designated for privat-
12 ization under subtitle B within 18 months of the date of
13 the transfer of such function to the Office. The Office
14 shall pursue such forms of privatization arrangements as
15 the Office considers appropriate to best serve the interests
16 of the United States. If the Office is unable to privatize
17 a function within 18 months, the Office shall report its
18 inability to the Congress with its recommendations as to
19 the appropriate disposition of the function and its assets.

20 (b) ROLE OF THE FEDERAL GOVERNMENT.—No pri-
21 vatization arrangement made under subsection (a) shall
22 include any future role for, or accountability to, the Fed-
23 eral Government unless it is necessary to assure the con-
24 tinued accomplishment of a specific Federal objective. The

1 Federal role should be the minimum necessary to accom-
 2 plish Federal objectives.

3 (c) ASSETS.—In privatizing a function, the Office of
 4 Management and Budget shall take any action necessary
 5 to preserve the value of the assets of a function during
 6 the period the Office holds such assets and to continue
 7 the performance of the function to the extent necessary
 8 to preserve the value of the assets or to accomplish core
 9 Federal objectives.

10 **SEC. 2109. PRIORITY PLACEMENT PROGRAMS FOR FED-**
 11 **ERAL EMPLOYEES AFFECTED BY A REDUC-**
 12 **TION IN FORCE ATTRIBUTABLE TO THIS**
 13 **TITLE.**

14 (a) IN GENERAL.—Subchapter I of chapter 33 of title
 15 5, United States Code, is amended by adding at the end
 16 the following:

17 **“§ 3329b. Priority placement programs for employees**
 18 **affected by a reduction in force attrib-**
 19 **utable to the Department of Commerce**
 20 **Dismantling Act**

21 “(a)(1) For the purpose of this section, the term ‘af-
 22 fected agency’—

23 “(A) except as provided in subparagraph (B),
 24 means an Executive agency to which personnel are
 25 transferred in connection with a transfer of function

1 under the Department of Commerce Dismantling
2 Act, and

3 “(B) with respect to employees of the Depart-
4 ment of Commerce in general administration, the In-
5 spector General’s office, or the General Counsel’s of-
6 fice, or who provided overhead support to other com-
7 ponents of the Department on a reimbursable basis,
8 means all agencies to which functions of those em-
9 ployees are transferred under the Department of
10 Commerce Dismantling Act.

11 “(2) This section applies with respect to any reduc-
12 tion in force that—

13 “(A) occurs within 12 months after the date of
14 the enactment of this section; and

15 “(B) is due to—

16 “(i) the termination of any function of the
17 Department of Commerce; or

18 “(ii) the agency’s having excess personnel
19 as a result of a transfer of function described
20 in paragraph (1), as determined by—

21 “(I) the Director of the Office of
22 Management and Budget, in the case of a
23 function transferred to the Office of Man-
24 agement and Budget; or

1 “(II) the head of the agency, in the
2 case of any other function.

3 “(b) As soon as practicable after the date of the en-
4 actment of this section, each affected agency shall estab-
5 lish an agencywide priority placement program to facili-
6 tate employment placement for employees who—

7 “(1) are scheduled to be separated from service
8 due to a reduction in force described in subsection
9 (a)(2); or

10 “(2) are separated from service due to such a
11 reduction in force.

12 “(c)(1) Each agencywide priority placement program
13 shall include provisions under which a vacant position
14 shall not be filled by the appointment or transfer of any
15 individual from outside of that agency if—

16 “(A) there is then available any individual de-
17 scribed in paragraph (2) who is qualified for the po-
18 sition; and

19 “(B) the position—

20 “(i) is at the same grade (or pay level) or
21 not more than 1 grade (or pay level) below that
22 of the position last held by such individual be-
23 fore placement in the new position; and

1 “(ii) is within the same commuting area as
2 the individual’s last-held position (as referred to
3 in clause (i)) or residence.

4 “(2) For purposes of an agencywide priority place-
5 ment program, an individual shall be considered to be de-
6 scribed in this paragraph if such individual’s most recent
7 performance evaluation was at least fully successful (or
8 the equivalent), and such individual is either—

9 “(A) an employee of such agency who is sched-
10 uled to be separated, as described in subsection
11 (b)(1); or

12 “(B) an individual who became a former em-
13 ployee of such agency as a result of a separation, as
14 described in subsection (b)(2).

15 “(d)(1) Nothing in this section shall affect any prior-
16 ity placement program of the Department of Defense
17 which is in operation as of the date of the enactment of
18 this section.

19 “(2) Nothing in this section shall impair placement
20 programs within agencies subject to reductions in force re-
21 sulting from causes other than the Department of Com-
22 merce Dismantling Act.

23 “(e) An individual shall cease to be eligible to partici-
24 pate in a program under this section on the earlier of—

1 “(1) the conclusion of the 12-month period be-
 2 ginning on the date on which that individual first
 3 became eligible to participate under subsection
 4 (c)(2); or

5 “(2) the date on which the individual declines
 6 a bona fide offer (or if the individual does not act
 7 on the offer, the last day for accepting such offer)
 8 from the affected agency of a position described in
 9 subsection (c)(1)(B).”.

10 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

11 (1) Title 5, United States Code, is amended by redesignat-
 12 ing the second section which is designated as section 3329
 13 as section 3329a.

14 (2) The table of sections for chapter 33 of title 5,
 15 United States Code, is amended by striking the item relat-
 16 ing to the second section which is designated as section
 17 3329 and inserting the following:

“3329a. Government-wide list of vacant positions.

“3329b. Priority placement programs for employees affected by a reduction
 in force attributable to the Department of Commerce Disman-
 tling Act.”.

18 **SEC. 2110. FUNDING REDUCTIONS FOR TRANSFERRED**
 19 **FUNCTIONS.**

20 (a) FUNDING REDUCTIONS.—Except as provided in
 21 subsection (b), the total amount obligated or expended by
 22 the United States in performing functions transferred
 23 under this title to the Director or to the Office from the

1 Department of Commerce, or any of its officers or compo-
2 nents, shall not exceed—

3 (1) for the first fiscal year that begins after the
4 abolishment date specified in section 2101(c), 75
5 percent of the total amount appropriated to the De-
6 partment of Commerce for the performance of such
7 functions in fiscal year 1995; and

8 (2) for the second fiscal year that begins after
9 the abolishment date specified in section 2101(c)
10 and for each fiscal year thereafter, 65 percent of the
11 total amount appropriated to the Department of
12 Commerce for the performance of such functions in
13 fiscal year 1995.

14 (b) EXCEPTION.—Subsection (a) shall not apply to
15 obligations or expenditures incurred as a direct con-
16 sequence of the termination, transfer, or other disposition
17 of functions described in subsection (a) pursuant to this
18 title.

19 (c) RULE OF CONSTRUCTION.—This section shall
20 take precedence over any other provision of law unless
21 such provision explicitly refers to this section and makes
22 an exception to it.

23 (d) RESPONSIBILITIES OF THE DIRECTOR.—The Di-
24 rector shall—

1 (1) ensure compliance with the requirements of
2 this section; and

3 (2) include in each report under sections
4 2105(a) and (b) a description of actions taken to
5 comply with such requirements.

6 **SEC. 2111. DEFINITIONS.**

7 For purposes of this subtitle, the following definitions
8 apply:

9 (1) DIRECTOR.—The term “Director” means
10 the Director of the Office of Management and Budget.
11 et.

12 (2) OFFICE.—The term “Office” means the Of-
13 fice of Management and Budget.

14 (3) WIND-UP PERIOD.—The term “wind-up pe-
15 riod” means the period beginning on the date of the
16 enactment of this Act and ending on the functions
17 termination date specified in section 2102(c).

1 **Subtitle B—Disposition of Various**
2 **Programs, Functions, and Agen-**
3 **cies of Department of Com-**
4 **merce**

5 **SEC. 2201. ABOLISHMENT OF ECONOMIC DEVELOPMENT**
6 **ADMINISTRATION AND TRANSFER OF FUNC-**
7 **TIONS.**

8 (a) IN GENERAL.—The Public Works and Economic
9 Development Act of 1965 (40 U.S.C. 3131 et seq.) is
10 amended by striking all after the first section and insert-
11 ing the following:

12 **“SEC. 2. ADMINISTRATOR DEFINED.**

13 “In this Act, the term ‘Administrator’ means the Ad-
14 ministrator of the Small Business Administration.

15 **“TITLE I—STATEMENT OF**
16 **PURPOSE**

17 **“SEC. 101. FINDINGS AND DECLARATION.**

18 “(a) FINDINGS.—Congress finds that—

19 “(1) the maintenance of the national economy
20 at a high level is vital to the best interests of the
21 United States, but that some of our regions, coun-
22 ties, and communities are suffering substantial and
23 persistent unemployment and underemployment that
24 cause hardship to many individuals and their fami-
25 lies, and waste invaluable human resources;

1 “(2) to overcome this problem the Federal Gov-
2 ernment, in cooperation with the States, should help
3 areas and regions of substantial and persistent un-
4 employment and underemployment to take effective
5 steps in planning and financing their public works
6 and economic development;

7 “(3) Federal financial assistance, including
8 grants for public works and development facilities to
9 communities, industries, enterprises, and individuals
10 in areas needing development should enable such
11 areas to help themselves achieve lasting improve-
12 ment and enhance the domestic prosperity by the es-
13 tablishment of stable and diversified local economies
14 and improved local conditions, if such assistance is
15 preceded by and consistent with sound, long-range
16 economic planning; and

17 “(4) under the provisions of this Act, new em-
18 ployment opportunities should be created by develop-
19 ing and expanding new and existing public works
20 and other facilities and resources rather than by
21 merely transferring jobs from one area of the United
22 States to another.

23 “(b) DECLARATION.—Congress declares that, in fur-
24 therance of maintaining the national economy at a high
25 level—

1 “(1) the assistance authorized by this Act
2 should be made available to both rural and urban
3 areas;

4 “(2) such assistance should be made available
5 for planning for economic development prior to the
6 actual occurrences of economic distress in order to
7 avoid such condition; and

8 “(3) such assistance should be used for long-
9 term economic rehabilitation in areas where long-
10 term economic deterioration has occurred or is tak-
11 ing place.

12 **“TITLE II—GRANTS FOR PUBLIC**
13 **WORKS AND DEVELOPMENT**
14 **FACILITIES**

15 **“SEC. 201. DIRECT AND SUPPLEMENTARY GRANTS.**

16 “(a) IN GENERAL.—Upon the application of any eli-
17 gible recipient, the Administrator may—

18 “(1) make direct grants for the acquisition or
19 development of land and improvements for public
20 works, public service, or development facility usage,
21 and the acquisition, design and engineering, con-
22 struction, rehabilitation, alteration, expansion, or im-
23 provement of such facilities, including related ma-
24 chinery and equipment, within an area described in
25 section 502(a), if the Administrator finds that—

1 “(A) the project for which financial assist-
2 ance is sought will directly or indirectly—

3 “(i) tend to improve the opportunities,
4 in the area where such project is or will be
5 located, for the successful establishment or
6 expansion of industrial or commercial
7 plants or facilities;

8 “(ii) otherwise assist in the creation
9 of additional long-term employment oppor-
10 tunities for such area; or

11 “(iii) primarily benefit the long-term
12 unemployed and members of low-income
13 families;

14 “(B) the project for which a grant is re-
15 quested will fulfill a pressing need of the area,
16 or part thereof, in which it is, or will be, lo-
17 cated; and

18 “(C) the area for which a project is to be
19 undertaken has an approved investment strat-
20 egy as provided by section 503 and such project
21 is consistent with such strategy;

22 “(2) make supplementary grants in order to en-
23 able the States and other entities within areas de-
24 scribed in section 502(a) to take maximum advan-
25 tage of designated Federal grant-in-aid programs (as

1 defined in subsection (c)(4)), direct grants-in-aid au-
2 thorized under this section, and Federal grant-in-aid
3 programs authorized by the Watershed Protection
4 and Flood Prevention Act (68 Stat. 666), and the
5 11 watersheds authorized by the Flood Control Act
6 of December 22, 1944 (58 Stat. 887), for which
7 they are eligible but for which, because of their eco-
8 nomic situation, they cannot supply the required
9 matching share.

10 “(b) COST SHARING.—Subject to subsection (c), the
11 amount of any direct grant under this subsection for any
12 project shall not exceed 50 percent of the cost of such
13 project.

14 “(c) REQUIREMENTS APPLICABLE TO SUPPLE-
15 MENTARY GRANTS.—

16 “(1) AMOUNT OF SUPPLEMENTARY GRANTS.—

17 “(A) IN GENERAL.—Except as provided by
18 subparagraph (B), the amount of any supple-
19 mentary grant under this section for any
20 project shall not exceed the applicable percent-
21 age established by regulations promulgated by
22 the Administrator, but in no event shall the
23 non-Federal share of the aggregate cost of any
24 such project (including assumptions of debt) be
25 less than 20 percent of such cost.

1 “(B) EXCEPTION.—Notwithstanding sub-
2 paragraph (A), in the case of an Indian tribe,
3 a State (or a political subdivision of the State),
4 or a community development corporation which
5 the Administrator determines has exhausted its
6 effective taxing and borrowing capacity, the Ad-
7 ministrator shall reduce the non-Federal share
8 below the percentage specified in subparagraph
9 (A) or shall waive the non-Federal share in the
10 case of such a grant for a project in an area
11 described in section 502(a)(4).

12 “(2) FORM OF SUPPLEMENTARY GRANTS.—
13 Supplementary grants shall be made by the Admin-
14 istrator, in accordance with such regulations as the
15 Administrator may prescribe, by increasing the
16 amounts of direct grants authorized under this sec-
17 tion or by the payment of funds appropriated under
18 this Act to the heads of the departments, agencies,
19 and instrumentalities of the Federal Government re-
20 sponsible for the administration of the applicable
21 Federal programs.

22 “(3) FEDERAL SHARE LIMITATIONS SPECIFIED
23 IN OTHER LAWS.—Notwithstanding any requirement
24 as to the amount or sources of non-Federal funds
25 that may otherwise be applicable to the Federal pro-

1 gram involved, funds provided under this subsection
2 shall be used for the sole purpose of increasing the
3 Federal contribution to specific projects in areas de-
4 scribed in section 502(a) under such programs above
5 the fixed maximum portion of the cost of such
6 project otherwise authorized by the applicable law.

7 “(4) DESIGNATED FEDERAL GRANT-IN-AID
8 PROGRAMS DEFINED.—In this subsection, the term
9 ‘designated Federal grant-in-aid programs’ means
10 such existing or future Federal grant-in-aid pro-
11 grams assisting in the construction or equipping of
12 facilities as the Administrator may, in furtherance of
13 the purposes of this Act, designate as eligible for al-
14 location of funds under this section.

15 “(5) CONSIDERATION OF RELATIVE NEED IN
16 DETERMINING AMOUNT.—In determining the
17 amount of any supplementary grant available to any
18 project under this section, the Administrator shall
19 take into consideration the relative needs of the area
20 and the nature of the projects to be assisted.

21 “(d) REGULATIONS.—The Administrator shall pre-
22 scribe rules, regulations, and procedures to carry out this
23 section which will assure that adequate consideration is
24 given to the relative needs of eligible areas. In prescribing

1 such rules, regulations, and procedures the Administrator
2 shall consider among other relevant factors—

3 “(1) the severity of the rates of unemployment
4 in the eligible areas and the duration of such unem-
5 ployment; and

6 “(2) the income levels of families and the extent
7 of underemployment in eligible areas.

8 “(e) REVIEW AND COMMENT UPON PROJECTS BY
9 LOCAL GOVERNMENTAL AUTHORITIES.—The Adminis-
10 trator shall prescribe regulations which will assure that
11 appropriate local governmental authorities have been given
12 a reasonable opportunity to review and comment upon
13 proposed projects under this section.

14 **“SEC. 202. CONSTRUCTION COST INCREASES.**

15 “In any case where a grant (including a supplemental
16 grant) has been made by the Administrator under this
17 title for a project and after such grant has been made
18 but before completion of the project, the cost of such
19 project based upon the designs and specifications which
20 were the basis of the grant has been increased because
21 of increases in costs, the amount of such grant may be
22 increased by an amount equal to the percentage increase,
23 as determined by the Administrator, in such costs, but in
24 no event shall the percentage of the Federal share of such
25 project exceed that originally provided for in such grant.

1 **“SEC. 203. USE OF FUNDS IN PROJECTS CONSTRUCTED**
2 **UNDER PROJECTED COST.**

3 “In any case where a grant (including a supplemental
4 grant) has been made by the Administrator under this
5 title for a project, and after such grant has been made
6 but before completion of the project, the cost of such
7 project based upon the designs and specifications which
8 were the basis of the grant has decreased because of de-
9 creases in costs, such underrun funds may be used to im-
10 prove the project either directly or indirectly as deter-
11 mined by the Administrator.

12 **“SEC. 204. CHANGED PROJECT CIRCUMSTANCES.**

13 “In any case where a grant (including a supplemental
14 grant) has been made by the Administrator under this
15 title for a project, and after such grant has been made
16 but before completion of the project, the purpose or scope
17 of such project based upon the designs and specifications
18 which were the basis of the grant has changed, the Admin-
19 istrator may approve the use of grant funds on such
20 changed project if the Administrator determines that such
21 changed project meets the requirements of this title and
22 that such changes are necessary to enhance economic de-
23 velopment in the area.

1 **“TITLE III—SPECIAL ECONOMIC**
2 **DEVELOPMENT AND ADJUST-**
3 **MENT ASSISTANCE**

4 **“SEC. 301. STATEMENT OF PURPOSE.**

5 “The purpose of this title to provide special economic
6 development and adjustment assistance programs to help
7 State and local areas meet special needs arising from ac-
8 tual or threatened severe unemployment arising from eco-
9 nomic dislocation (including unemployment arising from
10 actions of the Federal Government, from defense base clo-
11 sures and realignments, and from compliance with envi-
12 ronmental requirements which remove economic activities
13 from a locality) and economic adjustment problems result-
14 ing from severe changes in economic conditions (including
15 long-term economic deterioration), and to encourage coop-
16 erative intergovernmental action to prevent or solve eco-
17 nomic adjustment problems. Nothing in this title is in-
18 tended to replace the efforts of the economic adjustment
19 program of the Department of Defense.

20 **“SEC. 302. SPECIAL ECONOMIC DEVELOPMENT AND AD-**
21 **JUSTMENT ASSISTANCE.**

22 “(a) IN GENERAL.—The Administrator is authorized
23 to make grants directly to any eligible recipient in an area
24 which the Administrator determines, in accordance with

1 criteria to be established by the Administrator by regula-
2 tion—

3 “(1) has experienced, or may reasonably be
4 foreseen to be about to experience, a special need to
5 meet an expected rise in unemployment, or other
6 economic adjustment problems (including those
7 caused by any action or decision of the Federal Gov-
8 ernment); or

9 “(2) has demonstrated long-term economic de-
10 terioration.

11 “(b) PURPOSES.—Amounts from grants under sub-
12 section (a) shall be used by an eligible recipient to carry
13 out or develop an investment strategy which—

14 “(1) meets the requirements of section 503; and

15 “(2) is approved by the Administrator.

16 “(c) TYPES OF ASSISTANCE.—In carrying out an in-
17 vestment strategy using amounts from grants under sub-
18 section (a), an eligible recipient may provide assistance for
19 any of the following:

20 “(1) Public facilities.

21 “(2) Public services.

22 “(3) Business development.

23 “(4) Planning.

24 “(5) Research and technical assistance.

25 “(6) Administrative expenses.

1 “(7) Training.

2 “(8) Relocation of individuals and businesses.

3 “(9) Other assistance which demonstrably fur-
4 thers the economic adjustment objectives of this
5 title.

6 “(d) DIRECT EXPENDITURE OR REDISTRIBUTION BY
7 RECIPIENT.—Amounts from grants under subsection (a)
8 may be used in direct expenditures by the eligible recipient
9 or through redistribution by the eligible recipient to public
10 and private entities in grants, loans, loan guarantees, pay-
11 ments to reduce interest on loan guarantees, or other ap-
12 propriate assistance, but no grant shall be made by an
13 eligible recipient to a private profit-making entity.

14 “(e) COORDINATION.—The Administrator to the ex-
15 tent practicable shall coordinate the activities relating to
16 the requirements for investment strategies and making
17 grants and loans under this title with other Federal pro-
18 grams, States, economic development districts, and other
19 appropriate planning and development organizations.

20 “(f) BASE CLOSINGS AND REALIGNMENTS.—

21 “(1) LOCATION OF PROJECTS.—In any case in
22 which the Administrator determines a need for as-
23 sistance under subsection (a) due to the closure or
24 realignment of a military installation, the Adminis-
25 trator may make such assistance available for

1 projects to be carried out on the military installation
2 and for projects to be carried out in communities ad-
3 versely affected by the closure or realignment.

4 “(2) INTEREST IN PROPERTY.—Notwithstand-
5 ing any other provision of law, the Administrator
6 may provide to an eligible recipient any assistance
7 available under this Act for a project to be carried
8 out on a military installation that is closed or sched-
9 uled for closure or realignment without requiring
10 that the eligible recipient have title to the property
11 or a leasehold interest in the property for any speci-
12 fied term.

13 **“SEC. 303. ANNUAL REPORTS BY RECIPIENT.**

14 “Each eligible recipient which receives assistance
15 under this title from the Administrator shall annually dur-
16 ing the period such assistance continue to make a full and
17 complete report to the Administrator, in such manner as
18 the Administrator shall prescribe, and such report shall
19 contain an evaluation of the effectiveness of the economic
20 assistance provided under this title in meeting the need
21 it was designed to alleviate and the purposes of this title.

22 **“SEC. 304. SALE OF FINANCIAL INSTRUMENTS IN REVOLV-**
23 **ING LOAN FUNDS.**

24 “Any loan, loan guarantee, equity, or other financial
25 instrument in the portfolio of a revolving loan fund, in-

1 cluding any financial instrument made available using
2 amounts from a grant made before the effective date speci-
3 fied in section 802, may be sold, encumbered, or pledged
4 at the discretion of the grantee of the Fund, to a third
5 party provided that the net proceeds of the transaction—

6 “(1) shall be deposited into the Fund and may
7 only be used for activities which are consistent with
8 the purposes of this title; and

9 “(2) shall be subject to the financial manage-
10 ment, accounting, reporting, and auditing standards
11 which were originally applicable to the grant.

12 **“SEC. 305. TREATMENT OF REVOLVING LOAN FUNDS.**

13 “(a) IN GENERAL.—Amounts from grants made
14 under this title which are used by an eligible recipient to
15 establish a revolving loan fund shall not be treated, except
16 as provided by subsection (b), as amounts derived from
17 Federal funds for the purposes of any Federal law after
18 such amounts are loaned from the fund to a borrower and
19 repaid to the fund.

20 “(b) EXCEPTIONS.—Amounts described in subsection
21 (a) which are loaned from a revolving loan fund to a bor-
22 rower and repaid to the fund—

23 “(1) may only be used for activities which are
24 consistent with the purposes of this title; and

1 “(2) shall be subject to the financial manage-
2 ment, accounting, reporting, and auditing standards
3 which were originally applicable to the grant.

4 “(c) REGULATIONS.—Not later than 30 days after
5 the effective date specified in section 802, the Adminis-
6 trator shall issue regulations to carry out subsection (a).

7 “(d) PUBLIC REVIEW AND COMMENT.—Before issu-
8 ing any final guidelines or administrative manuals govern-
9 ing the operation of revolving loan funds established using
10 amounts from grants under this title, the Administrator
11 shall provide reasonable opportunity for public review of
12 and comment on such guidelines and administrative
13 manuals.

14 “(e) APPLICABILITY TO PAST GRANTS.—The re-
15 quirements of this section applicable to amounts from
16 grants made under this title shall also apply to amounts
17 from grants made, before the effective date specified in
18 section 802, under title I of this Act, as in effect on the
19 day before such effective date.

20 **“TITLE IV—TECHNICAL ASSIST-**
21 **ANCE, RESEARCH, AND IN-**
22 **FORMATION**

23 **“SEC. 401. TECHNICAL ASSISTANCE.**

24 “(a) IN GENERAL.—In carrying out its duties under
25 this Act, the Administrator may provide technical assist-

1 ance which would be useful in alleviating or preventing
2 conditions of excessive unemployment or
3 underemployment to areas which the Administrator finds
4 have substantial need for such assistance. Such assistance
5 shall include project planning and feasibility studies, man-
6 agement and operational assistance, establishment of busi-
7 ness outreach centers, and studies evaluating the needs
8 of, and development potentialities for, economic growth of
9 such areas.

10 “(b) PROCEDURES AND TERMS.—

11 “(1) MANNER OF PROVIDING ASSISTANCE.—As-
12 sistance may be provided by the Administrator
13 through—

14 “(A) members of the Administrator’s staff;

15 “(B) the payment of funds authorized for
16 this section to departments or agencies of the
17 Federal Government;

18 “(C) the employment of private individ-
19 uals, partnerships, firms, corporations, or suit-
20 able institutions under contracts entered into
21 for such purposes; or

22 “(D) grants-in-aid to appropriate public or
23 private nonprofit State, area, district, or local
24 organizations.

1 “(2) REPAYMENT TERMS.—The Administrator,
2 in the Administrator’s discretion, may require the
3 repayment of assistance provided under this sub-
4 section and prescribe the terms and conditions of
5 such repayment.

6 “(c) GRANTS COVERING ADMINISTRATIVE EX-
7 PENSES.—

8 “(1) IN GENERAL.—The Administrator may
9 make grants to defray not to exceed 50 percent of
10 the administrative expenses of organizations which
11 the Administrator determines to be qualified to re-
12 ceive grants-in-aid under subsections (a) and (b); ex-
13 cept that in the case of a grant under this sub-
14 section to an Indian tribe, the Administrator is au-
15 thorized to defray up to 100 percent of such ex-
16 penses.

17 “(2) DETERMINATION OF NON-FEDERAL
18 SHARE.—In determining the amount of the non-Fed-
19 eral share of such costs or expenses, the Adminis-
20 trator shall give due consideration to all contribu-
21 tions both in cash and in kind, fairly evaluated, in-
22 cluding contributions of space, equipment, and serv-
23 ices.

24 “(3) USE OF GRANTS WITH PLANNING
25 GRANTS.—Where practicable, grants-in-aid author-

1 ized under this subsection shall be used in conjunc-
2 tion with other available planning grants to assure
3 adequate and effective planning and economical use
4 of funds.

5 “(d) AVAILABILITY OF TECHNICAL INFORMATION;
6 FEDERAL PROCUREMENT.—The Administrator shall aid
7 areas described in section 502(a) and other areas by fur-
8 nishing to interested individuals, communities, industries,
9 and enterprises within such areas any assistance, technical
10 information, market research, or other forms of assist-
11 ance, information, or advice which would be useful in alle-
12 viating or preventing conditions of excessive unemploy-
13 ment or underemployment within such areas. The Admin-
14 istrator may furnish the procurement divisions of the var-
15 ious departments, agencies, and other instrumentalities of
16 the Federal Government with a list containing the names
17 and addresses of business firms which are located in areas
18 described in section 502(a) and which are desirous of ob-
19 taining Government contracts for the furnishing of sup-
20 plies or services, and designating the supplies and services
21 such firms are engaged in providing.

22 **“SEC. 402. ECONOMIC DEVELOPMENT PLANNING.**

23 “(a) DIRECT GRANTS.—

24 “(1) IN GENERAL.—The Administrator may
25 make, upon application of any State, or city, or

1 other political subdivision of a State, or sub-State
2 planning and development organization (including an
3 area described in section 502(a) or an economic de-
4 velopment district), direct grants to such State, city,
5 or other political subdivision, or organization to pay
6 up to 50 percent of the cost for economic develop-
7 ment planning.

8 “(2) PLANNING PROJECTS SPECIFICALLY IN-
9 CLUDED.—The planning for cities, other political
10 subdivisions, and sub-State planning and develop-
11 ment organizations (including areas described in sec-
12 tion 502(a) and economic development districts) as-
13 sisted under this section shall include systematic ef-
14 forts to reduce unemployment and increase incomes.

15 “(3) PLANNING PROCESS.—The planning shall
16 be a continuous process involving public officials and
17 private citizens in analyzing local economies, defin-
18 ing development goals, determining project opportu-
19 nities, and formulating and implementing a develop-
20 ment program.

21 “(4) COORDINATION OF ASSISTANCE UNDER
22 SECTION 401(c).—The assistance available under
23 this section may be provided in addition to assist-
24 ance available under section 401(c) but shall not
25 supplant such assistance.

1 “(b) COMPLIANCE WITH REVIEW PROCEDURE.—The
2 planning assistance authorized under this title shall be
3 used in conjunction with any other available Federal plan-
4 ning assistance to assure adequate and effective planning
5 and economical use of funds.

6 **“TITLE V—ELIGIBILITY AND**
7 **INVESTMENT STRATEGIES**

8 **“PART A—ELIGIBILITY**

9 **“SEC. 501. ELIGIBLE RECIPIENT DEFINED.**

10 “‘In this Act, the term ‘eligible recipient’ means an
11 area described in section 502(a), an economic development
12 district designated under section 510, an Indian tribe, a
13 State, a city or other political subdivision of a State, or
14 a consortium of such political subdivisions, or a public or
15 private nonprofit organization or association acting in co-
16 operation with officials of such political subdivisions.

17 **“SEC. 502. AREA ELIGIBILITY.**

18 “(a) CERTIFICATION.—In order to be eligible for as-
19 sistance under title II, an applicant seeking assistance to
20 undertake a project in an area shall certify, as part of
21 an application for such assistance, that the area on the
22 date of submission of such application meets 1 or more
23 of the following criteria:

24 “(1) The area has a per capita income of 80
25 percent or less of the national average.

1 “(2) The area has an unemployment rate 1 per-
2 cent above the national average percentage for the
3 most recent 24-month period for which statistics are
4 available.

5 “(3) The area has experienced or is about to
6 experience a sudden economic dislocation resulting
7 in job loss that is significant both in terms of the
8 number of jobs eliminated and the effect upon the
9 employment rate of the area.

10 “(4) The area is a community or neighborhood
11 (defined without regard to political or other subdivi-
12 sions or boundaries) which the Administrator deter-
13 mines has one or more of the following conditions:

14 “(A) A large concentration of low-income
15 persons.

16 “(B) Rural areas having substantial out-
17 migration.

18 “(C) Substantial unemployment.

19 “(b) DOCUMENTATION.—A certification made under
20 subsection (a) shall be supported by Federal data, when
21 available, and in other cases by data available through the
22 State government. Such documentation shall be accepted
23 by the Administrator unless it is determined to be inac-
24 curate. The most recent statistics available shall be used.

1 “(c) PRIOR DESIGNATIONS.—Any designation of a
2 redevelopment area made before the effective date speci-
3 fied in section 802 shall not be effective after such effec-
4 tive date.

5 **“SEC. 503. INVESTMENT STRATEGY.**

6 “The Administrator may provide assistance under ti-
7 tles II and III to an applicant for a project only if the
8 applicant submits to the Administrator, as part of an ap-
9 plication for such assistance, and the Administrator ap-
10 proves an investment strategy which—

11 “(1) identifies the economic development prob-
12 lems to be addressed using such assistance;

13 “(2) identifies past, present, and projected fu-
14 ture economic development investments in the area
15 receiving such assistance and public and private par-
16 ticipants and sources of funding for such invest-
17 ments;

18 “(3) sets forth a strategy for addressing the
19 economic problems identified pursuant to paragraph
20 (1) and describes how the strategy will solve such
21 problems;

22 “(4) provides a description of the project nec-
23 essary to implement the strategy, estimates of costs,
24 and timetables; and

1 “(5) provides a summary of public and private
2 resources expected to be available for the project.

3 **“SEC. 504. APPROVAL OF PROJECTS.**

4 “Only applications for grants or other assistance
5 under this Act for specific projects shall be approved which
6 are certified by the State representing such applicant and
7 determined by the Administrator—

8 “(1) to be included in a State investment strat-
9 egy;

10 “(2) to have adequate assurance that the
11 project will be properly administered, operated, and
12 maintained; and

13 “(3) to otherwise meet the requirements for as-
14 sistance under this Act.

15 **“PART B—ECONOMIC DEVELOPMENT DISTRICTS**

16 **“SEC. 510. DESIGNATION OF ECONOMIC DEVELOPMENT**
17 **DISTRICTS AND ECONOMIC DEVELOPMENT**
18 **CENTERS.**

19 “(a) IN GENERAL.—In order that economic develop-
20 ment projects of broader geographic significance may be
21 planned and carried out, the Administrator may—

22 “(1) designate appropriate ‘economic develop-
23 ment districts’ within the United States with the
24 concurrence of the States in which such districts will
25 be wholly or partially located, if—

1 “(A) the proposed district is of sufficient
2 size or population, and contains sufficient re-
3 sources, to foster economic development on a
4 scale involving more than a single area de-
5 scribed in section 502(a);

6 “(B) the proposed district contains at least
7 1 area described in section 502(a);

8 “(C) the proposed district contains 1 or
9 more areas described in section 502(a) or eco-
10 nomic development centers identified in an ap-
11 proved district investment strategy as having
12 sufficient size and potential to foster the eco-
13 nomic growth activities necessary to alleviate
14 the distress of the areas described in section
15 502(a) within the district; and

16 “(D) the proposed district has a district
17 investment strategy which includes adequate
18 land use and transportation planning and con-
19 tains a specific program for district cooperation,
20 self-help, and public investment and is approved
21 by the State or States affected and by the Ad-
22 ministrator;

23 “(2) designate as ‘economic development cen-
24 ters’, in accordance with such regulations as the Ad-

1 administrator shall prescribe, such areas as the Admin-
2 istrator may deem appropriate, if—

3 “(A) the proposed center has been identi-
4 fied and included in an approved district invest-
5 ment strategy and recommended by the State
6 or States affected for such special designation;

7 “(B) the proposed center is geographically
8 and economically so related to the district that
9 its economic growth may reasonably be expected
10 to contribute significantly to the alleviation of
11 distress in the areas described in section 502(a)
12 of the district; and

13 “(C) the proposed center does not have a
14 population in excess of 250,000 according to
15 the most recent Federal census.

16 “(3) provide financial assistance in accordance
17 with the criteria of this Act, except as may be herein
18 otherwise provided, for projects in economic develop-
19 ment centers designated under subsection (a)(2),
20 if—

21 “(A) the project will further the objectives
22 of the investment strategy of the district in
23 which it is to be located;

24 “(B) the project will enhance the economic
25 growth potential of the district or result in ad-

1 ditional long-term employment opportunities
2 commensurate with the amount of Federal fi-
3 nancial assistance requested; and

4 “(C) the amount of Federal financial as-
5 sistance requested is reasonably related to the
6 size, population, and economic needs of the dis-
7 trict;

8 “(4) subject to the 50 percent non-Federal
9 share required for any project by section 201(c), in-
10 crease the amount of grant assistance authorized by
11 section 201 for projects within areas described in
12 section 502(a), by an amount not to exceed 10 per-
13 cent of the aggregate cost of any such project, in ac-
14 cordance with such regulations as the Administrator
15 shall prescribe if—

16 “(A) the area described in section 502(a)
17 is situated within a designated economic devel-
18 opment district and is actively participating in
19 the economic development activities of the dis-
20 trict; and

21 “(B) the project is consistent with an ap-
22 proved investment strategy.

23 “(b) AUTHORITIES.—In designating economic devel-
24 opment districts and approving district investment strate-

1 gies under subsection (a), the Administrator may, under
2 regulations prescribed by the Administrator—

3 “(1) invite the several States to draw up pro-
4 posed district boundaries and to identify potential
5 economic development centers;

6 “(2) cooperate with the several States—

7 “(A) in sponsoring and assisting district
8 economic planning and development groups;
9 and

10 “(B) in assisting such district groups to
11 formulate district investment strategies; and

12 “(3) encourage participation by appropriate
13 local governmental authorities in such economic de-
14 velopment districts.

15 “(c) TERMINATION OR MODIFICATION OF DESIGNA-
16 TIONS.—The Administrator shall by regulation prescribe
17 standards for the termination or modification of economic
18 development districts and economic development centers
19 designated under the authority of this section.

20 “(d) DEFINITIONS.—In this Act, the following defini-
21 tions apply:

22 “(1) ECONOMIC DEVELOPMENT DISTRICT.—The
23 term ‘economic development district’ refers to any
24 area within the United States composed of cooperat-
25 ing areas described in section 502(a) and, where ap-

1 appropriate, designated economic development centers
2 and neighboring counties or communities, which has
3 been designated by the Administrator as an eco-
4 nomic development district. Such term includes any
5 economic development district designated under sec-
6 tion 403 of this Act, as in effect on the day before
7 the effective date specified in section 802.

8 “(2) ECONOMIC DEVELOPMENT CENTER.—The
9 term ‘economic development center’ refers to any
10 area within the United States which has been identi-
11 fied as an economic development center in an ap-
12 proved investment strategy and which has been des-
13 ignated by the Administrator as eligible for financial
14 assistance under this Act in accordance with the
15 provisions of this section.

16 “(3) LOCAL GOVERNMENT.—The term ‘local
17 government’ means any city, county, town, parish,
18 village, or other general-purpose political subdivision
19 of a State.

20 “(e) PARTS OF ECONOMIC DEVELOPMENT DISTRICTS
21 NOT WITHIN AREAS DESCRIBED IN SECTION 502(a).—
22 The Administrator is authorized to provide the financial
23 assistance which is available to an area described in sec-
24 tion 502(a) under this Act to those parts of an economic
25 development district which are not within an area de-

1 scribed in section 502(a), when such assistance will be of
2 a substantial direct benefit to an area described in section
3 502(a) within such district. Such financial assistance shall
4 be provided in the same manner and to the same extent
5 as is provided in this Act for an area described in section
6 502(a); except that nothing in this subsection shall be con-
7 strued to permit such parts to receive the increase in the
8 amount of grant assistance authorized in subsection
9 (a)(4).

10 **“TITLE VI—ADMINISTRATION**

11 **“SEC. 601. APPOINTMENT OF ASSOCIATE ADMINISTRATOR;**

12 **FULL TIME EQUIVALENT EMPLOYEES.**

13 “(a) APPOINTMENT.—The Administrator shall carry
14 out the duties vested in the Administrator by this Act act-
15 ing through an Associate Administrator of the Small Busi-
16 ness Administration, who shall be appointed by the Presi-
17 dent by and with the advice and consent of the Senate.

18 “(b) PAY.—The Associate Administrator shall be
19 compensated by the Federal Government at the rate pre-
20 scribed for level V of the Executive Schedule under section
21 5316 of title 5, United States Code.

22 “(c) FULL TIME EQUIVALENT EMPLOYEES.—The
23 Administrator shall assign not to exceed 25 full time
24 equivalent employees of the Small Business Administra-
25 tion (excluding the Associate Administrator) to assist the

1 Administrator in the carrying out the duties vested in the
2 Administrator by this Act.

3 **“SEC. 602. REGIONAL COOPERATIVE AGREEMENTS.**

4 “(a) IN GENERAL.—The Administrator shall make
5 grants and carry out such other functions under this Act
6 as the Administrator considers appropriate by entering
7 into cooperative agreements with 1 or more States on a
8 regional basis. Each State entering into such an agree-
9 ment shall be represented by the chief executive officer
10 of the State.

11 “(b) TERMS AND CONDITIONS.—A cooperative agree-
12 ment entered into under subsection (a) shall include such
13 terms and conditions as the Administrator determines are
14 necessary to carry out the provisions of this Act. Such
15 terms and conditions at a minimum shall provide that no
16 decision concerning regional policies or approval of project
17 or grant applications may be made without the consent
18 of the Administrator and a majority of the States partici-
19 pating in the cooperative agreement.

20 “(c) PARTICIPATION NOT REQUIRED.—No State
21 shall be required to enter into a cooperative agreement
22 under this section or to participate in any program estab-
23 lished by this Act.

1 **“SEC. 603. ADMINISTRATIVE EXPENSES.**

2 “(a) PAYMENT BY STATES.—Fifty percent of the ad-
3 ministrative expenses incurred by States in participating
4 in a cooperative agreement entered into under section 602
5 shall be paid by such States and the remaining 50 percent
6 of such expenses shall be paid by the Federal Government.

7 “(b) DETERMINATION OF STATE SHARE.—The share
8 of the administrative expenses to be paid by each State
9 participating in a cooperative agreement shall be deter-
10 mined by a majority vote of such States. The Adminis-
11 trator may not participate or vote in such determination.

12 “(c) DELINQUENT PAYMENTS.—No assistance au-
13 thorized by this Act shall be furnished to any State or
14 to any political subdivision or resident of a State, nor shall
15 the State participate or vote in any decision described in
16 section 602(b), while such State is delinquent in the pay-
17 ment of such State’s share of the administrative expenses
18 described in subsection (a).

19 **“SEC. 604. FEDERAL SHARE.**

20 “Except as otherwise expressly provided by this Act,
21 the Federal share of the cost of any project funded with
22 amounts made available under this Act shall not exceed
23 50 percent of such cost.

24 **“SEC. 605. COOPERATION OF FEDERAL AGENCIES.**

25 “Each Federal department and agency, in accordance
26 with applicable laws and within the limits of available

1 funds, shall cooperate with the Administrator in order to
2 assist the Administrator in carrying out the functions of
3 the Administrator.

4 **“SEC. 606. CONSULTATION WITH OTHER PERSONS AND**
5 **AGENCIES.**

6 “(a) CONSULTATION ON PROBLEMS RELATING TO
7 EMPLOYMENT.—The Administrator is authorized from
8 time to time to call together and confer with any persons,
9 including representatives of labor, management, agri-
10 culture, and government, who can assist in meeting the
11 problems of area and regional unemployment or
12 underemployment.

13 “(b) CONSULTATION ON ADMINISTRATION OF ACT.—
14 The Administrator may make provisions for such consulta-
15 tion with interested departments and agencies as the Ad-
16 ministrator may deem appropriate in the performance of
17 the functions vested in the Administrator by this Act.

18 **“SEC. 607. ADMINISTRATION, OPERATION, AND MAINTENANCE.**
19

20 “No Federal assistance shall be approved under this
21 Act unless the Administrator is satisfied that the project
22 for which Federal assistance is granted will be properly
23 and efficiently administered, operated, and maintained.

1 **“TITLE VII—MISCELLANEOUS**

2 **“SEC. 701. POWERS OF ADMINISTRATOR.**

3 “(a) IN GENERAL.—In performing the Administra-
4 tor’s duties under this Act, the Administrator is author-
5 ized to—

6 “(1) adopt, alter, and use a seal, which shall be
7 judicially noticed;

8 “(2) subject to the civil-service and classifica-
9 tion laws, select, employ, appoint, and fix the com-
10 pensation of such personnel as may be necessary to
11 carry out the provisions of this Act;

12 “(3) hold such hearings, sit and act at such
13 times and places, and take such testimony, as the
14 Administrator may deem advisable;

15 “(4) request directly from any executive depart-
16 ment, bureau, agency, board, commission, office,
17 independent establishment, or instrumentality infor-
18 mation, suggestions, estimates, and statistics needed
19 to carry out the purposes of this Act; and each de-
20 partment, bureau, agency, board, commission, office,
21 establishment, or instrumentality is authorized to
22 furnish such information, suggestions, estimates,
23 and statistics directly to the Administrator;

24 “(5) under regulations prescribed by the Ad-
25 ministrator, assign or sell at public or private sale,

1 or otherwise dispose of for cash or credit, in the Ad-
2 ministrator's discretion and upon such terms and
3 conditions and for such consideration as the Admin-
4 istrator determines to be reasonable, any evidence of
5 debt, contract, claim, personal property, or security
6 assigned to or held by the Administrator in connec-
7 tion with assistance extended under this Act, and
8 collect or compromise all obligations assigned to or
9 held by the Administrator in connection with such
10 assistance until such time as such obligations may
11 be referred to the Attorney General for suit or col-
12 lection;

13 “(6) deal with, complete, renovate, improve,
14 modernize, insure, rent, or sell for cash or credit,
15 upon such terms and conditions and for such consid-
16 eration as the Administrator determines to be rea-
17 sonable, any real or personal property conveyed to,
18 or otherwise acquired by the Administrator in con-
19 nection with assistance extended under this Act;

20 “(7) pursue to final collection, by way of com-
21 promise or other administrative action, prior to ref-
22 erence to the Attorney General, all claims against
23 third parties assigned to the Administrator in con-
24 nection with assistance extended this Act;

1 “(8) acquire, in any lawful manner and in ac-
2 cordance with the requirements of the Federal Prop-
3 erty and Administrative Services Act of 1949, any
4 property (real, personal, or mixed, tangible or intan-
5 gible), whenever necessary or appropriate to the con-
6 duct of the activities authorized under this Act;

7 “(9) in addition to any powers, functions, privi-
8 leges, and immunities otherwise vested in the Ad-
9 ministrator, take any action, including the procure-
10 ment of the services of attorneys by contract, deter-
11 mined by the Administrator to be necessary or desir-
12 able in making, purchasing, servicing, compromising,
13 modifying, liquidating, or otherwise administratively
14 dealing with assets held in connection with financial
15 assistance extended under this Act;

16 “(10) employ experts and consultants or organi-
17 zations as authorized by section 3109 of title 5,
18 United States Code, compensate individuals so em-
19 ployed at rates not in excess of \$100 per diem, in-
20 cluding travel time, and allow them, while away from
21 their homes or regular places of business, travel ex-
22 penses (including per diem in lieu of subsistence) as
23 authorized by section 5703 of title 5, United States
24 Code, for persons in the Government service em-
25 ployed intermittently, while so employed, except that

1 contracts for such employment may be renewed an-
2 nually;

3 “(11) sue and be sued in any court of record
4 of a State having general jurisdiction or in any Unit-
5 ed States district court, and jurisdiction is conferred
6 upon such district court to determine such con-
7 troversies without regard to the amount in con-
8 troversy; but no attachment, injunction, garnish-
9 ment, or other similar process, mesne or final, shall
10 be issued against the Administrator or the Adminis-
11 trator’s property;

12 “(12) make discretionary grants, pursuant to
13 authorities otherwise available to the Administrator
14 under this Act and without regard to the require-
15 ments of section 504, to implement significant re-
16 gional initiatives, to take advantage of special devel-
17 opment opportunities, or to respond to emergency
18 economic distress in a region from the funds with-
19 held from distribution by the Administrator; except
20 that the aggregate amount of such discretionary
21 grants in any fiscal year may not exceed 10 percent
22 of the amounts appropriated under title VIII for
23 such fiscal year;

24 “(13) allow a State to use not to exceed 5 per-
25 cent of the total of amounts received by the State

1 in a fiscal year in grants under this Act for reason-
2 able expenses incurred by the State in administering
3 such amounts; and

4 “(14) establish such rules, regulations, and pro-
5 cedures as the Administrator considers appropriate
6 in carrying out the provisions of this Act.

7 “(b) DEFICIENCY JUDGMENTS.—The authority
8 under subsection (a)(7) to pursue claims shall include the
9 authority to obtain deficiency judgments or otherwise in
10 the case of mortgages assigned to the Administrator.

11 “(c) INAPPLICABILITY OF CERTAIN OTHER RE-
12 QUIREMENTS.—Section 3709 of the Revised Statutes of
13 the United States shall not apply to any contract of haz-
14 ard insurance or to any purchase or contract for services
15 or supplies on account of property obtained by the Admin-
16 istrator as a result of assistance extended under this Act
17 if the premium for the insurance or the amount of the
18 insurance does not exceed \$1,000.

19 “(d) POWERS OF CONVEYANCE AND EXECUTION.—
20 The power to convey and to execute, in the name of the
21 Administrator, deeds of conveyance, deeds of release, as-
22 signments and satisfactions of mortgages, and any other
23 written instrument relating to real or personal property
24 or any interest therein acquired by the Administrator pur-
25 suant to the provisions of this Act may be exercised by

1 the Administrator, or by any officer or agent appointed
2 by the Administrator for such purpose, without the execu-
3 tion of any express delegation of power or power of attor-
4 ney.

5 **“SEC. 702. ESTABLISHMENT OF CLEARINGHOUSE.**

6 “In carrying out the Administrator’s duties under
7 this Act, the Administrator shall ensure that the Small
8 Business Administration—

9 “(1) serves as a central information clearing-
10 house on matters relating to economic development,
11 economic adjustment, disaster recovery, and defense
12 conversion programs and activities of the Federal
13 and State governments, including political subdivi-
14 sions of the States; and

15 “(2) helps potential and actual applicants for
16 economic development, economic adjustment, disas-
17 ter recovery, and defense conversion assistance
18 under Federal, State, and local laws in locating and
19 applying for such assistance, including financial and
20 technical assistance.

21 **“SEC. 703. PERFORMANCE MEASURES.**

22 “The Administrator shall establish performance
23 measures for grants and other assistance provided under
24 this Act. Such performance measures shall be used to

1 evaluate project proposals and conduct evaluations of
2 projects receiving such assistance.

3 **“SEC. 704. MAINTENANCE OF STANDARDS.**

4 “The Administrator shall continue to implement and
5 enforce the provisions of section 712 of this Act, as in
6 effect on the day before the effective date specified in sec-
7 tion 802.

8 **“SEC. 705. TRANSFER OF FUNCTIONS.**

9 “The functions, powers, duties, and authorities and
10 the assets, funds, contracts, loans, liabilities, commit-
11 ments, authorizations, allocations, and records which are
12 vested in or authorized to be transferred to the Secretary
13 of the Treasury under section 29(b) of the Area Redevel-
14 opment Act, and all functions, powers, duties, and authori-
15 ties under section 29(c) of such Act are hereby vested in
16 the Administrator.

17 **“SEC. 706. DEFINITION OF STATE.**

18 “In this Act, the terms ‘State’, ‘States’, and ‘United
19 States’ include the several States, the District of Colum-
20 bia, Puerto Rico, the Virgin Islands, American Samoa,
21 Guam, the Marshall Islands, Micronesia, and the North-
22 ern Mariana Islands.

23 **“SEC. 707. ANNUAL REPORT TO CONGRESS.**

24 “The Administrator shall transmit to Congress a
25 comprehensive and detailed annual report of the Adminis-

1 trator’s operations under this Act for each fiscal year be-
2 ginning with the fiscal year ending September 30, 1996.
3 Such report shall be printed and shall be transmitted to
4 Congress not later than April 1 of the year following the
5 fiscal year with respect to which such report is made.

6 **“SEC. 708. USE OF OTHER FACILITIES.**

7 “(a) DELEGATION OF FUNCTIONS TO OTHER FED-
8 ERAL DEPARTMENTS AND AGENCIES.—The Adminis-
9 trator may delegate to the heads of other departments and
10 agencies of the Federal Government any of the Adminis-
11 trator’s functions, powers, and duties under this Act as
12 the Administrator may deem appropriate, and to authorize
13 the redelegation of such functions, powers, and duties by
14 the heads of such departments and agencies.

15 “(b) DEPARTMENT AND AGENCY EXECUTION OF
16 DELEGATED AUTHORITY.—Departments and agencies of
17 the Federal Government shall exercise their powers, du-
18 ties, and functions in such manner as will assist in carry-
19 ing out the objectives of this Act.

20 “(c) TRANSFER BETWEEN DEPARTMENTS.—Funds
21 authorized to be appropriated under this Act may be
22 transferred between departments and agencies of the Gov-
23 ernment, if such funds are used for the purposes for which
24 they are specifically authorized and appropriated.

1 “(d) FUNDS TRANSFERRED FROM OTHER DEPART-
2 MENTS AND AGENCIES.—In order to carry out the objec-
3 tives of this Act, the Administrator may accept transfers
4 of funds from other departments and agencies of the Fed-
5 eral Government if the funds are used for the purposes
6 for which (and in accordance with the terms under which)
7 the funds are specifically authorized and appropriated.
8 Such transferred funds shall remain available until ex-
9 pended, and may be transferred to and merged with the
10 appropriations under the heading ‘salaries and expenses’
11 by the Administrator to the extent necessary to administer
12 the program.

13 **“SEC. 709. EMPLOYMENT OF EXPEDITERS AND ADMINIS-**
14 **TRATIVE EMPLOYEES.**

15 “No financial assistance shall be extended by the Ad-
16 ministrator under this Act to any business enterprise un-
17 less the owners, partners, or officers of such business en-
18 terprise—

19 “(1) certify to the Administrator the names of
20 any attorneys, agents, and other persons engaged by
21 or on behalf of such business enterprise for the pur-
22 pose of expediting applications made to the Adminis-
23 trator for assistance of any sort, under this Act, and
24 the fees paid or to be paid to any such person; and

1 “(2) execute an agreement binding such busi-
2 ness enterprise, for a period of 2 years after such
3 assistance is rendered by the Administrator to such
4 business enterprise, to refrain from employing, ten-
5 dering any office or employment to, or retaining for
6 professional services, any person who, on the date
7 such assistance or any part thereof was rendered, or
8 within the 1-year period ending on such date, shall
9 have served as an officer, attorney, agent, or em-
10 ployee, occupying a position or engaging in activities
11 which the Administrator determines involves discre-
12 tion with respect to the granting of assistance under
13 this Act.

14 **“SEC. 710. MAINTENANCE OF RECORDS OF APPROVED AP-**
15 **PLICATIONS FOR FINANCIAL ASSISTANCE;**
16 **PUBLIC INSPECTION.**

17 “(a) MAINTENANCE OF RECORD REQUIRED.—The
18 Administrator shall maintain as a permanent part of the
19 records of the Small Business Administration a list of ap-
20 plications approved for financial assistance under this Act,
21 which shall be kept available for public inspection during
22 the regular business hours of the Small Business Adminis-
23 tration.

1 “(b) POSTING TO LIST.—The following information
2 shall be posted in such list as soon as each application
3 is approved:

4 “(1) The name of the applicant and, in the case
5 of corporate applications, the names of the officers
6 and directors thereof.

7 “(2) The amount and duration of the financial
8 assistance for which application is made.

9 “(3) The purposes for which the proceeds of the
10 financial assistance are to be used.

11 **“SEC. 711. RECORDS AND AUDIT.**

12 “(a) RECORDKEEPING AND DISCLOSURE REQUIRE-
13 MENTS.—Each recipient of assistance under this Act shall
14 keep such records as the Administrator shall prescribe, in-
15 cluding records which fully disclose the amount and the
16 disposition by such recipient of the proceeds of such assist-
17 ance, the total cost of the project or undertaking in con-
18 nection with which such assistance is given or used, and
19 the amount and nature of that portion of the cost of the
20 project or undertaking supplied by other sources, and such
21 other records as will facilitate an effective audit.

22 “(b) ACCESS TO BOOKS FOR EXAMINATION AND
23 AUDIT.—The Administrator and the Comptroller General
24 of the United States, or any of their duly authorized rep-
25 resentatives, shall have access for the purpose of audit and

1 examination to any books, documents, papers, and records
2 of the recipient that are pertinent to assistance received
3 under this Act.

4 **“SEC. 712. PROHIBITION AGAINST A STATUTORY CON-**
5 **STRUCTION WHICH MIGHT CAUSE DIMINU-**
6 **TION IN OTHER FEDERAL ASSISTANCE.**

7 “All financial and technical assistance authorized
8 under this Act shall be in addition to any Federal assist-
9 ance previously authorized, and no provision of this Act
10 shall be construed as authorizing or permitting any reduc-
11 tion or diminution in the proportional amount of Federal
12 assistance to which any State or other entity eligible under
13 this Act would otherwise be entitled under the provisions
14 of any other Act.

15 **“SEC. 713. ACCEPTANCE OF APPLICANTS’ CERTIFICATIONS.**

16 “The Administrator may accept, when deemed appro-
17 priate, the applicants’ certifications to meet the require-
18 ments of this Act.

19 **“TITLE VIII—FUNDING;**
20 **EFFECTIVE DATE**

21 **“SEC. 801. AUTHORIZATION OF APPROPRIATIONS**

22 “There is authorized to be appropriated to carry out
23 this Act \$340,000,000 per fiscal year for each of fiscal
24 years 1996, 1997, 1998, 1999, and 2000. Such sums shall
25 remain available until expended.

1 **“SEC. 802. EFFECTIVE DATE.**

2 “The effective date specified in this section is the
3 abolishment date specified in section 2101(c) of the De-
4 partment of Commerce Dismantling Act.”.

5 (b) CONFORMING AMENDMENTS TO TITLE 5.—Sec-
6 tion 5316 of title 5, United States Code, is amended—

7 (1) by striking “Associate Administrators of the
8 Small Business Administration (4)” and inserting
9 “Associate Administrators of the Small Business
10 Administration (5)”; and

11 (2) by striking “Administrator for Economic
12 Development.”.

13 (c) GAO STUDY.—On or before December 30, 1996,
14 the Comptroller General shall submit to Congress a plan
15 or plans for consolidating economic development programs
16 throughout the Federal Government. The plan or plans
17 shall focus on, but not be limited to, consolidating pro-
18 grams included in the Catalogue of Federal Domestic As-
19 sistance with similar purposes and target populations. The
20 plan or plans shall detail how consolidation can lead to
21 improved grant or program management, improvements in
22 achieving program goals, and reduced costs.

23 **SEC. 2202. TECHNOLOGY ADMINISTRATION.**

24 (a) TECHNOLOGY ADMINISTRATION.—

1 (1) GENERAL RULE.—Except as otherwise pro-
2 vided in this section, the Technology Administration
3 is terminated.

4 (2) OFFICE OF TECHNOLOGY POLICY.—The Of-
5 fice of Technology Policy is terminated.

6 (b) NATIONAL INSTITUTE OF STANDARDS AND
7 TECHNOLOGY.—

8 (1) REDESIGNATION.—The National Institute
9 of Standards and Technology is hereby redesignated
10 as the National Bureau of Standards, and all ref-
11 erences to the National Institute of Standards and
12 Technology in Federal law or regulations are deemed
13 to be references to the National Bureau of Stand-
14 ards.

15 (2) GENERAL RULE.—The National Bureau of
16 Standards (in this subsection referred to as the
17 “Bureau”) is transferred to the National Scientific,
18 Oceanic, and Atmospheric Administration, estab-
19 lished under section 2206.

20 (3) FUNCTIONS OF DIRECTOR.—Except as oth-
21 erwise provided in this section or section 2207, upon
22 the transfer under paragraph (2), the Director of
23 the Bureau shall perform all functions relating to
24 the Bureau that, immediately before the effective
25 date specified in section 2208(a), were functions of

1 the Secretary of Commerce or the Under Secretary
2 of Commerce for Technology.

3 (c) NATIONAL TECHNICAL INFORMATION SERV-
4 ICE.—

5 (1) PRIVATIZATION.—All functions of the Na-
6 tional Technical Information Service are transferred
7 to the Director of Office of Management and Budget
8 for privatization in accordance with section 2108 be-
9 fore the end of the 18-month period beginning on
10 the date of the enactment of this Act.

11 (2) TRANSFER TO NATIONAL SCIENTIFIC, OCE-
12 ANIC, AND ATMOSPHERIC ADMINISTRATION.—If an
13 appropriate arrangement for the privatization of
14 functions of the National Technical Information
15 Service under paragraph (1) has not been made be-
16 fore the end of the period described in that para-
17 graph, the National Technical Information Service
18 shall be transferred as of the end of such period to
19 the National Scientific, Oceanic, and Atmospheric
20 Administration established by section 2206.

21 (3) GOVERNMENT CORPORATION.—If an appro-
22 priate arrangement for the privatization of functions
23 of the National Technical Information Service under
24 paragraph (1) has not been made before the end of
25 the period described in that paragraph, the Director

1 of the Office of Management and Budget shall, with-
2 in 6 months after the end of such period, submit to
3 Congress a proposal for legislation to establish the
4 National Technical Information Service as a wholly
5 owned Government corporation. The proposal should
6 provide for the corporation to perform substantially
7 the same functions that, as of the date of enactment
8 of this Act, are performed by the National Technical
9 Information Service.

10 (4) FUNDING.—No funds are authorized to be
11 appropriated for the National Technical Information
12 Service or any successor corporation established pur-
13 suant to a proposal under paragraph (3).

14 (d) AMENDMENTS.—

15 (1) NATIONAL INSTITUTE OF STANDARDS AND
16 TECHNOLOGY ACT.—The National Institute of
17 Standards and Technology Act (15 U.S.C. 271 et
18 seq.) is amended—

19 (A) in section 2(b), by striking paragraph
20 (1) and redesignating paragraphs (2) through
21 (11) as paragraphs (1) through (10), respec-
22 tively;

23 (B) in section 2(d), by striking “, including
24 the programs established under sections 25, 26,
25 and 28 of this Act”;

1 (C) in section 10, by striking “Advanced”
2 in both the section heading and subsection (a),
3 and inserting in lieu thereof “Standards and”;
4 and

5 (D) by striking sections 24, 25, 26, and
6 28.

7 (2) STEVENSON-WYDLER TECHNOLOGY INNOVA-
8 TION ACT OF 1980.—The Stevenson-Wydler Tech-
9 nology Innovation Act of 1980 (15 U.S.C. 3701 et
10 seq.) is amended—

11 (A) in section 3, by striking paragraph (2)
12 and redesignating paragraphs (3) through (5)
13 as paragraphs (2) through (4), respectively;

14 (B) in section 4, by striking paragraphs
15 (1), (4), and (13) and redesignating paragraphs
16 (2), (3), (5), (6), (7), (8), (9), (10), (11), and
17 (12) as paragraphs (1) through (10), respec-
18 tively;

19 (C) by striking sections 5, 6, 7, 8, 9, and
20 10;

21 (D) in section 11—

22 (i) by striking “, the Federal Labora-
23 tory Consortium for Technology Transfer,”
24 in subsection (c)(3);

1 (ii) by striking “and the Federal Lab-
2 oratory Consortium for Technology Trans-
3 fer” in subsection (d)(2);

4 (iii) by striking “, and refer such re-
5 quests” and all that follows through “avail-
6 able to the Service” in subsection (d)(3);
7 and

8 (iv) by striking subsection (e); and
9 (E) in section 17—

10 (i) by striking “Subject to paragraph
11 (2), separate” in subsection (c)(1) and in-
12 serting in lieu thereof “Separate”;

13 (ii) by striking paragraph (2) of sub-
14 section (c) and redesignating paragraph
15 (3) as paragraph (2);

16 (iii) by striking “funds to carry out”
17 in subsection (f), and inserting in lieu
18 thereof “funds only to pay the salary of
19 the Director of the Office of Quality Pro-
20 grams, who shall be responsible for carry-
21 ing out”; and

22 (iv) by adding at the end the following
23 new subsection:

24 “(h) VOLUNTARY AND UNCOMPENSATED SERV-
25 ICES.—The Director of the Office of Quality Programs

1 may accept voluntary and uncompensated services not-
2 withstanding the provisions of section 1342 of title 31,
3 United States Code.”.

4 (3) MISCELLANEOUS AMENDMENTS.—Section 3
5 of Public Law 94–168 (15 U.S.C. 205b) is amend-
6 ed—

7 (A) by striking paragraph (2);

8 (B) by redesignating paragraphs (3) and
9 (4) as paragraphs (2) and (3), respectively; and

10 (C) in paragraph (3), as so redesignated
11 by subparagraph (B) of this paragraph, by
12 striking “in nonbusiness activities”.

13 **SEC. 2203. REORGANIZATION OF THE BUREAU OF THE CEN-**
14 **SUS AND THE BUREAU OF ECONOMIC ANALY-**
15 **SIS.**

16 (a) TRANSFER OF FUNCTIONS.—All functions of the
17 Secretary of Commerce relating to the Bureau of the Cen-
18 sus and the Bureau of Economic Analysis of the Depart-
19 ment of Commerce are transferred to the Secretary of
20 Labor.

21 (b) TRANSFER OF BUREAUS.—The Bureau of the
22 Census and Bureau of Economic Analysis of the Depart-
23 ment of Commerce are transferred to the Department of
24 Labor.

1 (c) CONSOLIDATION WITH THE BUREAU OF LABOR
2 STATISTICS.—The Secretary of Labor shall consolidate
3 the Bureaus transferred under subsection (b) with the Bu-
4 reau of Labor Statistics within the Department of Labor.

5 (d) REFERENCES TO SECRETARY.—Section 1(2) of
6 the title 13, United States Code, is amended by striking
7 out “Secretary of Commerce” and inserting in lieu thereof
8 “Secretary of Labor”.

9 (e) REFERENCES TO DEPARTMENT.—Section 2 of
10 title 13, United States Code, is amended by striking out
11 “Department of Commerce” and inserting in lieu thereof
12 “Department of Labor”.

13 (f) GENERAL REFERENCES TO SECRETARY AND DE-
14 PARTMENT.—The provisions of title 13, United States
15 Code, are further amended—

16 (1) by striking out “Secretary of Commerce”
17 each place such term appears and insert in lieu
18 thereof “Secretary of Labor”; and

19 (2) by striking out “Department of Commerce”
20 each place such term appears and inserting in lieu
21 thereof “Department of Labor”.

22 (g) SUBMISSION OF PLAN.—Within 180 days after
23 the date of enactment of this Act, the President shall
24 transmit to the Congress—

1 (1) a determination of the feasibility and poten-
2 tial savings resulting from the further consolidation
3 of statistical functions throughout the Government
4 into a single agency; and

5 (2) draft legislation under which the provisions
6 of title 13, United States Code, relating to confiden-
7 tiality (including offenses and penalties) shall be ap-
8 plied after the consolidation under subsection (c) has
9 been effected.

10 (h) SENSE OF THE CONGRESS.—It is the sense of
11 the Congress that the Bureau of the Census or the agency
12 established as a result of the consolidation under sub-
13 section (c) should—

14 (1) make appropriate use of any authority af-
15 forded to it by the Census Address List Improve-
16 ment Act of 1994 (Public Law 103–430; 108 Stat.
17 4393), and take measures to ensure the timely im-
18 plementation of such Act; and

19 (2) streamline census questionnaires to promote
20 savings in the collection and tabulation of data.

21 **SEC. 2204. TERMINATED FUNCTIONS OF NTIA.**

22 (a) REPEALS.—The following provisions of law are
23 repealed:

24 (1) Subpart A of part IV of title III of the
25 Communications Act of 1934 (47 U.S.C. 390 et

1 seq.), relating to assistance for public telecommuni-
2 cations facilities.

3 (2) Subpart B of part IV of title III of the
4 Communications Act of 1934 (47 U.S.C. 394 et
5 seq.), relating to the Endowment for Children's
6 Educational Television.

7 (3) Subpart C of part IV of title III of the
8 Communications Act of 1934 (47 U.S.C. 395 et
9 seq.), relating to Telecommunications Demonstration
10 grants.

11 (b) DISPOSAL OF NTIA LABORATORIES.—

12 (1) PRIVATIZATION.—All laboratories of the
13 National Telecommunications and Information Ad-
14 ministration are transferred to the Director of the
15 Office of Management and Budget for privatization
16 in accordance with section 2108 before the end of
17 the 18-month period beginning on the date of the
18 enactment of this Act.

19 (2) TRANSFER TO NATIONAL SCIENTIFIC, OCE-
20 ANIC, AND ATMOSPHERIC ADMINISTRATION.—If an
21 appropriate arrangement for the privatization of
22 functions of the laboratories of the National Tele-
23 communications and Information Administration
24 under paragraph (1) has not been made before the
25 end of the period described in that paragraph, the

1 laboratories of the National Telecommunications and
2 Information Administration shall be transferred as
3 of the end of such period to the National Scientific,
4 Oceanic, and Atmospheric Administration estab-
5 lished by section 2206.

6 (3) TRANSFER OF FUNCTIONS.—The functions
7 of the National Telecommunications and Informa-
8 tion Administration concerning research and analy-
9 sis of the electromagnetic spectrum described in sec-
10 tion 5112(b) of the Omnibus Trade and Competi-
11 tiveness Act of 1988 (15 U.S.C. 1532) are trans-
12 ferred to the Director of the National Bureau of
13 Standards.

14 (c) TRANSFER OF NATIONAL TELECOMMUNICATIONS
15 AND INFORMATION ADMINISTRATION FUNCTIONS.—

16 (1) TRANSFER TO USTR.—Except as provided
17 in subsection (b)(2), the functions of the National
18 Telecommunications and Information Administra-
19 tion, and of the Secretary of Commerce and the As-
20 sistant Secretary for Communications and Informa-
21 tion of the Department of Commerce with respect to
22 the National Telecommunications and Information
23 Administration, are transferred to the United States
24 Trade Representative. The functions transferred by
25 this paragraph shall be placed in an organizational

1 component that is independent from all USTR func-
2 tions directly related to the negotiation of trade
3 agreements. Such functions shall be supervised by
4 an individual whose principal professional expertise
5 is in the area of telecommunications. The position to
6 which such individual is appointed shall be graded at
7 a level sufficiently high to attract a highly qualified
8 individual, while ensuring autonomy in the conduct
9 of such functions from all activities and influences
10 associated with trade negotiations.

11 (2) REFERENCES.—References in any provision
12 of law (including the National Telecommunications
13 and Information Administration Organization Act)
14 to the Secretary of Commerce or the Assistant Sec-
15 retary for Communications and Information of the
16 Department of Commerce—

17 (A) with respect to a function vested pur-
18 suant to this section in the United States Trade
19 Representative shall be deemed to refer to the
20 United States Trade Representative; and

21 (B) with respect to a function vested pur-
22 suant to this section in the Director of the Na-
23 tional Bureau of Standards shall be deemed to
24 refer to the Director of the National Bureau of
25 Standards.

1 (3) TERMINATION OF NTIA.—Effective on the
2 abolishment date specified in section 2101(c), the
3 National Telecommunications and Information Ad-
4 ministration is abolished.

5 **SEC. 2205. NATIONAL OCEANIC AND ATMOSPHERIC ADMIN-**
6 **ISTRATION.**

7 (a) TERMINATION OF MISCELLANEOUS RESEARCH
8 PROGRAMS AND ACCOUNTS.—

9 (1) IN GENERAL.—No funds may be appro-
10 priated in any fiscal year for the following programs
11 and accounts of the National Scientific, Oceanic,
12 and Atmospheric Administration:

13 (A) The National Undersea Research Pro-
14 gram.

15 (B) The Fleet Modernization Program.

16 (C) The Charleston, South Carolina, Spe-
17 cial Management Plan.

18 (D) Chesapeake Bay Observation Buoys
19 (as of September 30, 1996).

20 (E) Federal/State Weather Modification
21 Grants.

22 (F) The Southeast Storm Research Ac-
23 count.

1 (G) The Southeast United States Carib-
2 bean Fisheries Oceanographic Coordinated In-
3 vestigations Program.

4 (H) National Institute for Environmental
5 Renewal.

6 (I) The Lake Champlain Study.

7 (J) The Maine Marine Research Center.

8 (K) The South Carolina Cooperative Geo-
9 detic Survey Account.

10 (L) Pacific Island Technical Assistance.

11 (M) Sea Grant Oyster Disease Account.

12 (N) Sea Grant Zebra Mussel Account.

13 (O) VENTS program.

14 (P) National Weather Service non-Federal,
15 non-wildfire Weather Service.

16 (Q) National Weather Service Regional
17 Climate Centers.

18 (R) National Weather Service Samoa
19 Weather Forecast Office Repair and Upgrade
20 Account.

21 (S) Dissemination of Weather Charts (Ma-
22 rine Facsimile Service).

23 (T) The Climate and Global Change Ac-
24 count.

1 (U) The Global Learning and Observations
2 to Benefit the Environment Program.

3 (V) Great Lakes nearshore research.

4 (W) Mussel watch.

5 (2) REPEALS.—The following provisions of law
6 are repealed:

7 (A) The Ocean Thermal Conversion Act of
8 1980 (42 U.S.C. 9101 et seq.).

9 (B) Title IV of the Marine Protection, Re-
10 search, and Sanctuaries Act of 1972 (16 U.S.C.
11 1447 et seq.).

12 (C) Title V of the Marine Protection, Re-
13 search, and Sanctuaries Act of 1972 (33 U.S.C.
14 2801 et seq.).

15 (D) The Great Lakes Shoreline Mapping
16 Act of 1987 (33 U.S.C. 883a note).

17 (E) The Great Lakes Fish and Wildlife
18 Tissue Bank Act (16 U.S.C. 943 et seq.).

19 (F) The Nonindigenous Aquatic Nuisance
20 Prevention and Control Act of 1990 (16 U.S.C.
21 4701 et seq.), except for those provisions affect-
22 ing the Assistant Secretary of the Army (civil
23 works) and the Secretary of the department in
24 which the Coast Guard is operating.

1 (G) Section 3 of the Sea Grant Program
2 Improvement Act of 1976 (33 U.S.C. 1124a).

3 (H) Section 208(c) of the National Sea
4 Grant College Program Act (33 U.S.C.
5 1127(c)).

6 (I) Section 305 of the Coastal Zone Man-
7 agement Act of 1972 (16 U.S.C. 1454) is re-
8 pealed effective October 1, 1998.

9 (J) The NOAA Fleet Modernization Act
10 (33 U.S.C. 891 et seq.).

11 (K) Public Law 85–342 (72 Stat. 35; 16
12 U.S.C. 778 et seq.), relating to fish research
13 and experimentation.

14 (L) The first section of the Act of August
15 8, 1956 (70 Stat. 1126; 16 U.S.C. 760d), relat-
16 ing to grants for commercial fishing education.

17 (M) Public Law 86–359 (16 U.S.C. 760e
18 et seq.), relating to the study of migratory ma-
19 rine gamefish.

20 (N) The Act of August 15, 1914 (Chapter
21 253; 38 Stat. 692; 16 U.S.C. 781 et seq.), pro-
22 hibiting the taking of sponges in the Gulf of
23 Mexico and the Straits of Florida.

24 (b) AERONAUTICAL MAPPING AND CHARTING.—

1 (1) IN GENERAL.—The aeronautical mapping
2 and charting functions of the National Oceanic and
3 Atmospheric Administration are transferred to the
4 Defense Mapping Agency.

5 (2) TERMINATION OF CERTAIN FUNCTIONS.—
6 The Defense Mapping Agency shall terminate any
7 functions transferred under paragraph (1) that are
8 performed by the private sector.

9 (3) FUNCTIONS REQUESTED BY FEDERAL AVIA-
10 TION ADMINISTRATION.—(A) Notwithstanding para-
11 graph (2), the Director of the Defense Mapping
12 Agency shall carry out such aeronautical charting
13 functions as may be requested by the Administrator
14 of the Federal Aviation Administration.

15 (B) In carrying out aeronautical mapping func-
16 tions requested by the Administrator under subpara-
17 graph (A), the Director shall—

18 (i) publish and distribute to the public and
19 to the Administrator any aeronautical charts re-
20 quested by the Administrator; and

21 (ii) provide to the Administrator such
22 other air traffic control products and services as
23 may be requested by the Administrator,
24 in such manner and including such information as
25 the Administrator determines is necessary for, or

1 will promote, the safe and efficient movement of air-
2 craft in air commerce.

3 (4) CONTINUING APPLICABILITY.—The require-
4 ments of section 1307 of title 44, United States
5 Code, shall continue to apply with respect to all
6 aeronautical products created or published by the
7 Director of the Defense Mapping Agency in carrying
8 out the functions transferred to the Director under
9 this paragraph; except that the prices for such prod-
10 ucts shall be established jointly by the Director and
11 the Secretary of Transportation on an annual basis.

12 (c) TRANSFER OF MAPPING, CHARTING, AND GEOD-
13 ESY FUNCTIONS TO THE UNITED STATES GEOLOGICAL
14 SURVEY.—

15 (1) IN GENERAL.—Except as provided in sub-
16 section (b), there are hereby transferred to the Di-
17 rector of the United States Geological Survey the
18 functions relating to mapping, charting, and geodesy
19 authorized under the Act of August 7, 1947 (61
20 Stat. 787; 33 U.S.C. 883a).

21 (2) TERMINATION OF CERTAIN FUNCTIONS.—
22 The Director of the United States Geological Survey
23 shall terminate any functions transferred under
24 paragraph (1) that are performed by the private sec-
25 tor.

1 (d) NESDIS.—There are transferred to the National
2 Scientific, Oceanic, and Atmospheric Administration all
3 functions and assets of the National Oceanic and Atmos-
4 pheric Administration that on the date immediately before
5 the effective date of this section were authorized to be per-
6 formed by the National Environmental Satellite, Data,
7 and Information System.

8 (e) OAR.—There are transferred to the National Sci-
9 entific, Oceanic, and Atmospheric Administration all func-
10 tions and assets of the National Oceanic and Atmospheric
11 Administration (including global programs) that on the
12 date immediately before the effective date of this section
13 were authorized to be performed by the Office of Oceanic
14 and Atmospheric Research.

15 (f) NWS.—

16 (1) IN GENERAL.—There are transferred to the
17 National Scientific, Oceanic, and Atmospheric Ad-
18 ministration all functions and assets of the National
19 Oceanic and Atmospheric Administration that on the
20 date immediately before the effective date of this
21 section were authorized to be performed by the Na-
22 tional Weather Service.

23 (2) DUTIES.—To protect life and property and
24 enhance the national economy, the Administrator of
25 Science, Oceans, and the Atmosphere, through the

1 National Weather Service, except as outlined in
2 paragraph (3), shall be responsible for the following:

3 (A) Forecasts. The Administrator of
4 Science, Oceans, and the Atmosphere, through
5 the National Weather Service, shall serve as the
6 sole official source of severe weather warnings.

7 (B) Issuance of storm warnings.

8 (C) The collection, exchange, and distribu-
9 tion of meteorological, hydrological, climatic,
10 and oceanographic data and information.

11 (D) The preparation of hydro-meteorologi-
12 cal guidance and core forecast information.

13 (3) LIMITATIONS ON COMPETITION.—The Na-
14 tional Weather Service may not compete, or assist
15 other entities to compete, with the private sector to
16 provide a service when that service is currently pro-
17 vided or can be provided by a commercial enterprise
18 unless—

19 (A) the Administrator of Science, Oceans,
20 and the Atmosphere finds that the private sec-
21 tor is unwilling or unable to provide the service;
22 or

23 (B) the Administrator of Science, Oceans,
24 and the Atmosphere finds that the service pro-
25 vides vital weather warnings and forecasts for

1 the protection of lives and property of the gen-
2 eral public.

3 (4) ORGANIC ACT AMENDMENTS.—

4 (A) AMENDMENTS.—The Act of 1890 is
5 amended—

6 (i) by striking section 3 (15 U.S.C.
7 313); and

8 (ii) in section 9 (15 U.S.C. 317), by
9 striking “Department of” and all that fol-
10 lows thereafter and inserting “National
11 Scientific, Oceanic, and Atmospheric Ad-
12 ministration.”.

13 (B) DEFINITION.—For purposes of this
14 paragraph, the term “Act of 1890” means the
15 Act entitled “An Act to increase the efficiency
16 and reduce the expenses of the Signal Corps of
17 the Army, and to transfer the Weather Bureau
18 to the Department of Agriculture”, approved
19 October 1, 1890 (26 Stat. 653).

20 (5) REPEAL.—Sections 706 and 707 of the
21 Weather Service Modernization Act (15 U.S.C. 313
22 note) are repealed.

23 (6) CONFORMING AMENDMENTS.—The Weather
24 Service Modernization Act (15 U.S.C. 313 note) is
25 amended—

1 (A) in section 702, by striking paragraph
2 (3) and redesignating paragraphs (4) through
3 (10) as paragraphs (3) through (9), respec-
4 tively; and

5 (B) in section 703—

6 (i) by striking “(a) NATIONAL IMPLE-
7 MENTATION PLAN.—”;

8 (ii) by striking paragraph (3) and re-
9 designating paragraphs (4), (5), and (6) as
10 paragraphs (3), (4), and (5), respectively;
11 and

12 (iii) by striking subsections (b) and
13 (c).

14 (g) TERMINATION OF THE NATIONAL OCEANIC AND
15 ATMOSPHERIC ADMINISTRATION CORPS OF COMMIS-
16 SIONED OFFICERS.—

17 (1) NUMBER OF OFFICERS.—Notwithstanding
18 section 8 of the Act of June 3, 1948 (33 U.S.C.
19 853g), the total number of commissioned officers on
20 the active list of the National Scientific, Oceanic,
21 and Atmospheric Administration shall not exceed—

22 (A) 358 as of September 30, 1996;

23 (B) 180 as of September 30, 1997; and

24 (C) 0 for any fiscal year beginning after
25 September 30, 1998.

1 (2) SEPARATION PAY.—(A) Commissioned offi-
2 cers may be separated from the active list of the Na-
3 tional Scientific, Oceanic, and Atmospheric Adminis-
4 tration. Any officer so separated because of para-
5 graph (1) shall, subject to subparagraph (B) and the
6 availability of appropriations, be eligible for separa-
7 tion pay under section 9 of the Act of June 3, 1948
8 (33 U.S.C. 853h) to the same extent as if such offi-
9 cer had been separated under section 8 of such Act
10 (33 U.S.C. 853g).

11 (B) Any officer who, under paragraph (4),
12 transfers to another of the uniformed services or be-
13 comes employed in a civil service position shall not
14 be eligible for separation pay under this paragraph.

15 (C)(i) Any officer who receives separation pay
16 under this paragraph shall be required to repay the
17 amount received if, within 1 year after the date of
18 the separation on which the payment is based, such
19 officer is reemployed in a civil service position in the
20 National Scientific, Oceanic, and Atmospheric Ad-
21 ministration, the duties of which position would for-
22 merly have been performed by a commissioned offi-
23 cer, as determined by the Administrator of Science,
24 Oceans, and the Atmosphere.

1 (ii) A repayment under this subparagraph shall
2 be made in a lump sum or in such installments as
3 the Administrator may specify.

4 (D) In the case of any officer who makes a re-
5 payment under subparagraph (C)—

6 (i) the National Scientific, Oceanic, and
7 Atmospheric Administration shall pay into the
8 Civil Service Retirement and Disability Fund,
9 on such officer's behalf, any deposit required
10 under section 8422(e)(1) of title 5, United
11 States Code, with respect to any prior service
12 performed by that individual as such an officer;
13 and

14 (ii) if the amount paid under clause (i) is
15 less than the amount of the repayment under
16 subparagraph (C), the National Scientific, Oce-
17 anic, and Atmospheric Administration shall pay
18 into the Government Securities Investment
19 Fund (established under section 8438(b)(1)(A)
20 of title 5, United States Code), on such individ-
21 ual's behalf, an amount equal to the difference.

22 The provisions of paragraph (5)(C)(iv) shall apply
23 with respect to any contribution to the Thrift Sav-
24 ings Plan made under clause (ii).

1 (3) PRIORITY PLACEMENT PROGRAM.—A prior-
2 ity placement program similar to the programs de-
3 scribed in section 3329b of title 5, United States
4 Code, as amended by section 2109, shall be estab-
5 lished by the National Scientific, Oceanic, and At-
6 mospheric Administration to assist commissioned of-
7 ficers who are separated from the active list of the
8 National Scientific, Oceanic, and Atmospheric Ad-
9 ministration because of paragraph (1).

10 (4) TRANSFER.—(A) Subject to the approval of
11 the Secretary of Defense and under terms and con-
12 ditions specified by the Secretary, commissioned offi-
13 cers subject to paragraph (1) may transfer to the
14 Armed Forces under section 716 of title 10, United
15 States Code.

16 (B) Subject to the approval of the Secretary of
17 Transportation and under terms and conditions
18 specified by the Secretary, commissioned officers
19 subject to paragraph (1) may transfer to the United
20 States Coast Guard under section 716 of title 10,
21 United States Code.

22 (C) Subject to the approval of the Adminis-
23 trator of Science, Oceans, and the Atmosphere and
24 under terms and conditions specified by that Admin-
25 istrator, commissioned officers subject to paragraph

1 (1) may be employed by the National Scientific, Oce-
2 anic, and Atmospheric Administration as members
3 of the civil service.

4 (5) RETIREMENT PROVISIONS.—(A) For com-
5 missioned officers who transfer under paragraph
6 (4)(A) to the Armed Forces, the National Scientific,
7 Oceanic, and Atmospheric Administration shall pay
8 into the Department of Defense Military Retirement
9 Fund an amount, to be calculated by the Secretary
10 of Defense in consultation with the Secretary of the
11 Treasury, equal to the actuarial present value of any
12 retired or retainer pay they will draw upon retire-
13 ment, including full credit for service in the NOAA
14 Corps. Any payment under this subparagraph shall,
15 for purposes of paragraph (2) of section 2206(g), be
16 considered to be an expenditure described in such
17 paragraph.

18 (B) For commissioned officers who transfer
19 under paragraph (4)(B) to the United States Coast
20 Guard, full credit for service in the NOAA Corps
21 shall be given for purposes of any annuity or other
22 similar benefit under the retirement system for
23 members of the United States Coast Guard, entitle-
24 ment to which is based on the separation of such of-
25 ficer.

1 (C)(i) For a commissioned officer who becomes
2 employed in a civil service position pursuant to para-
3 graph (4)(C) and thereupon becomes subject to the
4 Federal Employees' Retirement System, the Na-
5 tional Scientific, Oceanic, and Atmospheric Adminis-
6 tration shall pay, on such officer's behalf—

7 (I) into the Civil Service Retirement and
8 Disability Fund, the amounts required under
9 clause (ii); and

10 (II) into the Government Securities Invest-
11 ment Fund, the amount required under clause
12 (iii).

13 (ii)(I) The amount required under this
14 subclause is the amount of any deposit required
15 under section 8422(e)(1) of such title 5 with respect
16 to any prior service performed by the individual as
17 a commissioned officer of the National Oceanic and
18 Atmospheric Administration.

19 (II) To determine the amount required under
20 this subclause, first determine, for each year of serv-
21 ice with respect to which the deposit under subclause
22 (I) relates, the product of the normal-cost percent-
23 age for such year (as determined under the last sen-
24 tence of this subclause) multiplied by basic pay re-
25 ceived by the individual for any such service per-

1 formed in such year. Second, take the sum of the
2 amounts determined for the respective years under
3 the first sentence. Finally, subtract from such sum
4 the amount of the deposit under subclause (I). For
5 purposes of the first sentence, the normal-cost per-
6 centage for any year shall be as determined for such
7 year under the provisions of section 8423(a)(1) of
8 title 5, United States Code, except that, in the case
9 of any year before the first year for which any nor-
10 mal-cost percentage was determined under such pro-
11 visions, the normal-cost percentage for such first
12 year shall be used.

13 (iii) The amount required under this clause is
14 the amount by which the separation pay to which
15 the officer would have been entitled under the sec-
16 ond sentence of paragraph (2)(A) (assuming the
17 conditions for receiving such separation pay have
18 been met) exceeds the amount of the deposit under
19 clause (ii)(I), if at all.

20 (iv)(I) Any contribution made under this sub-
21 paragraph to the Thrift Savings Plan shall not be
22 subject to any otherwise applicable limitation on con-
23 tributions contained in the Internal Revenue Code of
24 1986, and shall not be taken into account in apply-
25 ing any such limitation to other contributions or

1 benefits under the Thrift Savings Plan, with respect
2 to the year in which the contribution is made.

3 (II) Such plan shall not be treated as failing to
4 meet any nondiscrimination requirement by reason
5 of the making of such contribution.

6 (6) REPEALS.—(A) The following provisions of
7 law are repealed:

8 (i) The Coast and Geodetic Survey Com-
9 missioned Officers' Act of 1948 (33 U.S.C.
10 853a–853o, 853p–853u).

11 (ii) The Act of February 16, 1929 (Chap-
12 ter 221, section 5; 45 Stat. 1187; 33 U.S.C.
13 852a).

14 (iii) The Act of January 19, 1942 (Chap-
15 ter 6; 56 Stat. 6).

16 (iv) Section 9 of Public Law 87–649 (76
17 Stat. 495).

18 (v) The Act of May 22, 1917 (Chapter 20,
19 section 16; 40 Stat. 87; 33 U.S.C. 854 et seq.).

20 (vi) The Act of December 3, 1942 (Chap-
21 ter 670; 56 Stat. 1038.

22 (vii) Sections 1 through 5 of Public Law
23 91–621 (84 Stat. 1863; 33 U.S.C. 857–1 et
24 seq.).

1 (viii) The Act of August 10, 1956 (Chapter
2 1041, section 3; 70A Stat. 619; 33 U.S.C.
3 857a).

4 (ix) The Act of May 18, 1920 (Chapter
5 190, section 11; 41 Stat. 603; 33 U.S.C. 864).

6 (x) The Act of July 22, 1947 (Chapter
7 286; 61 Stat. 400; 33 U.S.C. 873, 874).

8 (xi) The Act of August 3, 1956 (Chapter
9 932; 70 Stat. 988; 33 U.S.C. 875, 876).

10 (xii) All other Acts inconsistent with this
11 subsection.

12 No repeal under this subparagraph shall affect any
13 annuity or other similar benefit payable, under any
14 provision of law so repealed, based on the separation
15 of any individual from the NOAA Corps or its suc-
16 cessor on or before September 30, 1998. Any au-
17 thority exercised by the Secretary of Commerce or
18 his designee with respect to any such benefits shall
19 be exercised by the Administrator of Science,
20 Oceans, and the Atmosphere, and any authorization
21 of appropriations relating to those benefits, which is
22 in effect as of September 30, 1998, shall be consid-
23 ered to have remained in effect.

24 (B) The effective date of the repeals under sub-
25 paragraph (A) shall be October 1, 1998.

1 (C)(i) All laws relating to the retirement of
2 commissioned officers of the Navy shall apply to
3 commissioned officers of the former Commissioned
4 Officers Corps of the National Oceanic and Atmos-
5 pheric Administration and its predecessors.

6 (ii) Active service of officers of the former Com-
7 missioned Officers Corps of the National Oceanic
8 and Atmospheric Administration and its prede-
9 cessors who have retired from the Commissioned Of-
10 ficers Corps shall be deemed to be active military
11 service in the United States Navy for purposes of all
12 rights, privileges, immunities, and benefits provided
13 to retired commissioned officers of the Navy by the
14 laws and regulations of the United States and any
15 agency thereof. In the Administration of those laws
16 and regulations with respect to retired officers of the
17 former Commissioned Officers Corps of the National
18 Oceanic and Atmospheric Administration and its
19 predecessors, the authority of the Secretary of the
20 Navy shall be exercised by the Administrator of
21 Science, Oceans, and the Atmosphere.

22 (iii) For purposes of this subparagraph, the
23 term “its predecessors” means the former Commis-
24 sioned Officers Corps of the Environmental Science
25 Services Administration and the former Commis-

1 sioned Officers Corps of the Coast and Geodetic
2 Survey.

3 (7) CREDITABILITY OF NOAA SERVICE FOR
4 PURPOSES RELATING TO REDUCTIONS IN FORCE.—

5 A commissioned officer who is separated from the
6 active list of the National Oceanic and Atmospheric
7 Administration or its successor because of paragraph
8 (1) shall, for purposes of any subsequent reduction
9 in force, receive credit for any period of service per-
10 formed as such an officer before separation from
11 such list to the same extent and in the same manner
12 as if it had been a period of active service in the
13 Armed Forces.

14 (8) ABOLITION.—The Office of the National
15 Oceanic and Atmospheric Administration Corps of
16 Operations or its successor and the Commissioned
17 Personnel Center are abolished effective September
18 30, 1998.

19 (h) NOAA FLEET.—

20 (1) SERVICE CONTRACTS.—Notwithstanding
21 any other provision of law and subject to the avail-
22 ability of appropriations, the Administrator of
23 Science, Oceans, and the Atmosphere shall enter
24 into contracts, including multiyear contracts, subject
25 to paragraph (3), for the use of vessels to conduct

1 oceanographic research and fisheries research, mon-
2 itoring, enforcement, and management, and to ac-
3 quire other data necessary to carry out the missions
4 of the National Scientific, Oceanic, and Atmospheric
5 Administration. The Administrator of Science,
6 Oceans, and the Atmosphere shall enter into these
7 contracts unless—

8 (A) the cost of the contract is more than
9 the cost (including the cost of vessel operation,
10 maintenance, and all personnel) to the National
11 Scientific, Oceanic, and Atmospheric Adminis-
12 tration of obtaining those services on vessels of
13 the National Scientific, Oceanic, and Atmos-
14 pheric Administration;

15 (B) the contract is for more than 7 years;

16 or

17 (C) the data is acquired through a vessel
18 agreement pursuant to paragraph (4).

19 (2) VESSELS.—The Administrator of Science,
20 Oceans, and the Atmosphere may not enter into any
21 contract for the construction, lease-purchase, up-
22 grade, or service life extension of any vessel.

23 (3) MULTIYEAR CONTRACTS.—

24 (A) IN GENERAL.—Subject to subpara-
25 graphs (B) and (C), and notwithstanding sec-

tion 1341 of title 31, United States Code, and section 11 of title 41, United States Code, the Administrator of Science, Oceans, and the Atmosphere may acquire data under multiyear contracts.

(B) REQUIRED FINDINGS.—The Administrator of Science, Oceans, and the Atmosphere may not enter into a contract pursuant to this paragraph unless such Administrator finds with respect to that contract that there is a reasonable expectation that throughout the contemplated contract period the Administrator will request from Congress funding for the contract at the level required to avoid contract termination.

(C) REQUIRED PROVISIONS.—The Administrator of Science, Oceans, and the Atmosphere may not enter into a contract pursuant to this paragraph unless the contract includes—

(i) a provision under which the obligation of the United States to make payments under the contract for any fiscal year is subject to the availability of appropriations provided in advance for those payments;

1 (ii) a provision that specifies the term
2 of effectiveness of the contract; and

3 (iii) appropriate provisions under
4 which, in case of any termination of the
5 contract before the end of the term speci-
6 fied pursuant to clause (ii), the United
7 States shall only be liable for the lesser
8 of—

9 (I) an amount specified in the
10 contract for such a termination; or

11 (II) amounts that were appro-
12 priated before the date of the termi-
13 nation for the performance of the con-
14 tract or for procurement of the type
15 of acquisition covered by the contract
16 and are unobligated on the date of the
17 termination.

18 (4) VESSEL AGREEMENTS.—The Administrator
19 of Science, Oceans, and the Atmosphere shall use ex-
20 cess capacity of University National Oceanographic
21 Laboratory System vessels where appropriate and
22 may enter into memoranda of agreement with the
23 operators of these vessels to carry out this require-
24 ment.

1 (5) TRANSFER OF EXCESS VESSELS.—The Ad-
2 ministrator of Science, Oceans, and the Atmosphere
3 shall transfer any vessels over 1,500 gross tons that
4 are excess to the needs of the National Scientific,
5 Oceanic, and Atmospheric Administration to the Na-
6 tional Defense Reserve Fleet. Notwithstanding any
7 other provision of law, these vessels may be scrapped
8 in accordance with section 510(i) of the Merchant
9 Marine Act, 1936 (46 App. U.S.C. 1160(i)).

10 (i) NATIONAL MARINE FISHERIES SERVICE.—(1)
11 There are transferred to the National Scientific, Oceanic,
12 and Atmospheric Administration all functions that on the
13 day before the effective date of this section were author-
14 ized by law to be performed by the National Marine Fish-
15 eries Service.

16 (2) Notwithstanding any other provision of law, the
17 National Marine Fisheries Service may not affect on-land
18 activities under the Endangered Species Act of 1973 for
19 salmon recovery in the State of Idaho (16 U.S.C. 1531
20 et seq.).

21 (j) NATIONAL OCEAN SERVICE.—Except as otherwise
22 provided in this title, there are transferred to the National
23 Scientific, Oceanic, and Atmospheric Administration all
24 functions and assets of the National Oceanic and Atmos-
25 pheric Administration that on the date immediately before

1 the effective date of this section were authorized to be per-
2 formed by the National Ocean Service (including the
3 Coastal Ocean Program).

4 (k) TRANSFER OF COASTAL NONPOINT POLLUTION
5 CONTROL FUNCTIONS.—There are transferred to the Ad-
6 ministrator of the Environmental Protection Agency the
7 functions under section 6217 of the Omnibus Budget Rec-
8 onciliation Act of 1990 (16 U.S.C. 1455b) that on the day
9 before the effective date of this section were vested in the
10 Secretary of Commerce.

11 **SEC. 2206. NATIONAL SCIENTIFIC, OCEANIC, AND ATMOS-**
12 **PHERIC ADMINISTRATION.**

13 (a) ESTABLISHMENT.—There is established as an
14 independent agency in the Executive Branch the National
15 Scientific, Oceanic, and Atmospheric Administration (in
16 this section referred to as the “NSOAA”). The NSOAA,
17 and all functions and offices transferred to it under this
18 title, shall be administered under the supervision and di-
19 rection of an Administrator of Science, Oceans, and the
20 Atmosphere. The Administrator of Science, Oceans, and
21 the Atmosphere shall be appointed by the President, by
22 and with the advice and consent of the Senate, and shall
23 receive basic pay at the rate payable for level II of the
24 Executive Schedule under section 5313 of title 5, United
25 States Code. The Administrator of Science, Oceans, and

1 the Atmosphere shall additionally perform the functions
2 previously performed by the Administrator of the National
3 Oceanic and Atmospheric Administration.

4 (b) PRINCIPAL OFFICER.—There shall be in the
5 NSOAA, on the transfer of functions and offices under
6 this title, a Director of the National Bureau of Standards,
7 who shall be appointed by the President, by and with the
8 advice and consent of the Senate, and who shall receive
9 basic pay at the rate payable for level IV of the Executive
10 Schedule under section 5315 of title 5, United States
11 Code.

12 (c) ADDITIONAL OFFICERS.—There shall be in the
13 NSOAA—

14 (1) a Chief Financial Officer of the NSOAA, to
15 be appointed by the President, by and with the ad-
16 vice and consent of the Senate;

17 (2) a Chief of External Affairs, to be appointed
18 by the President, by and with the advice and consent
19 of the Senate;

20 (3) a General Counsel, to be appointed by the
21 President, by and with the advice and consent of the
22 Senate; and

23 (4) an Inspector General, to be appointed in ac-
24 cordance with the Inspector General Act of 1978.

1 Each Officer appointed under this subsection shall receive
2 basic pay at the rate payable for level IV of the Executive
3 Schedule under section 5315 of title 5, United States
4 Code.

5 (d) TRANSFER OF FUNCTIONS AND OFFICES.—Ex-
6 cept as otherwise provided in this title, there are trans-
7 ferred to the NSOAA—

8 (1) the functions and offices of the National
9 Oceanic and Atmospheric Administration, as pro-
10 vided in section 2205;

11 (2) the National Bureau of Standards, along
12 with its functions and offices, as provided in section
13 2202; and

14 (3) the Office of Space Commerce, along with
15 its functions and offices.

16 (e) ELIMINATION OF POSITIONS.—The Adminis-
17 trator of Science, Oceans, and the Atmosphere may elimi-
18 nate positions that are no longer necessary because of the
19 termination of functions under this section, section 2202,
20 and section 2205.

21 (f) AGENCY TERMINATIONS.—

22 (1) TERMINATIONS.—On the date specified in
23 section 2208(a), the following shall terminate:

1 (A) The Office of the Deputy Adminis-
2 trator and Assistant Secretary of the National
3 Oceanic and Atmospheric Administration.

4 (B) The Office of the Deputy Under Sec-
5 retary of the National Oceanic and Atmospheric
6 Administration.

7 (C) The Office of the Chief Scientist of the
8 National Oceanic and Atmospheric Administra-
9 tion.

10 (D) The position of Deputy Assistant Sec-
11 retary for Oceans and Atmosphere.

12 (E) The position of Deputy Assistant Sec-
13 retary for International Affairs.

14 (F) Any office of the National Oceanic and
15 Atmospheric Administration or the National
16 Bureau of Standards whose primary purpose is
17 to perform high performance computing com-
18 munications, legislative, personnel, public rela-
19 tions, budget, constituent, intergovernmental,
20 international, policy and strategic planning,
21 sustainable development, administrative, finan-
22 cial, educational, legal and coordination func-
23 tions. These functions shall, as necessary, be
24 performed only by officers described in sub-
25 section (c).

1 (G) The position of Associate Director of
2 the National Institute of Standards and Tech-
3 nology.

4 (2) TERMINATION OF EXECUTIVE SCHEDULE
5 POSITIONS.—Each position which was expressly au-
6 thorized by law, or the incumbent of which was au-
7 thorized to receive compensation at the rate pre-
8 scribed for levels I through V of the Executive
9 Schedule under sections 5312 through 5315 of title
10 5, United States Code, in an office terminated pur-
11 suant to this section, section 2202, and section 2205
12 shall also terminate.

13 (g) FUNDING REDUCTIONS RESULTING FROM REOR-
14 GANIZATION.—

15 (1) FUNDING REDUCTIONS.—Notwithstanding
16 the transfer of functions under this subtitle, the
17 total amount obligated or expended by the United
18 States in performing all functions vested in the Na-
19 tional Scientific, Oceanic, and Atmospheric Adminis-
20 tration pursuant to this subtitle shall not exceed—

21 (A) for the first fiscal year that begins
22 after the abolishment date specified in section
23 2101(c), 75 percent of the total amount appro-
24 priated for fiscal year 1995 for the performance
25 of all functions vested in the National Oceanic

1 and Atmospheric Administration, the National
2 Institute of Standards and Technology, and the
3 Office of Space Commerce, except for those
4 functions transferred under section 2205 to
5 agencies or departments other than the Na-
6 tional Scientific, Oceanic, and Atmospheric Ad-
7 ministration; and

8 (B) for the second fiscal year that begins
9 after the abolishment date specified in section
10 2101(c) and for each fiscal year thereafter, 65
11 percent of the total amount appropriated for
12 fiscal year 1995 for the performance of all func-
13 tions vested in the National Oceanic and At-
14 mospheric Administration, the National Insti-
15 tute of Standards and Technology, and the Of-
16 fice of Space Commerce, except for those func-
17 tions transferred under section 22045 to agen-
18 cies or departments other than the National
19 Scientific, Oceanic, and Atmospheric Adminis-
20 tration.

21 (2) EXCEPTION.—Paragraph (1) shall not
22 apply to obligations or expenditures incurred as a di-
23 rect consequence of the termination, transfer, or
24 other disposition of functions described in paragraph
25 (1) pursuant to this subtitle.

1 (3) RULE OF CONSTRUCTION.—This subsection
2 shall take precedence over any other provision of law
3 unless such provision explicitly refers to this section
4 and makes an exception to it.

5 (4) RESPONSIBILITY OF NATIONAL SCIENTIFIC,
6 OCEANIC, AND ATMOSPHERIC ADMINISTRATION.—
7 The National Scientific, Oceanic, and Atmospheric
8 Administration, in consultation with the Director of
9 the Office of Management and Budget, shall make
10 such modifications in programs as are necessary to
11 carry out the reductions in appropriations set forth
12 in subparagraphs (A) and (B) of paragraph (1).

13 (5) RESPONSIBILITIES OF THE DIRECTOR OF
14 THE OFFICE OF MANAGEMENT AND BUDGET.—The
15 Director of the Office of Management and Budget
16 shall include in each report under sections 2105(a)
17 and (b) a description of actions taken to comply with
18 the requirements of this subsection.

19 **SEC. 2207. MISCELLANEOUS TERMINATIONS; MORATORIUM**
20 **ON PROGRAM ACTIVITIES.**

21 (a) TERMINATIONS.—The following agencies and pro-
22 grams of the Department of Commerce are terminated:

23 (1) The Minority Business Development Admin-
24 istration.

1 (2) The United States Travel and Tourism Ad-
2 ministration.

3 (3) The programs and activities of the National
4 Telecommunications and Information Administration
5 referred to in section 2204(a).

6 (4) The Advanced Technology Program under
7 section 28 of the National Institute of Standards
8 and Technology Act (15 U.S.C. 278n).

9 (5) The Manufacturing Extension Programs
10 under sections 25 and 26 of the National Institute
11 of Standards and Technology Act (15 U.S.C. 278k
12 and 278l).

13 (6) The National Institute of Standards and
14 Technology METRIC Program.

15 (b) MORATORIUM ON PROGRAM ACTIVITIES.—The
16 authority to make grants, enter into contracts, provide as-
17 sistance, incur obligations, or provide commitments (in-
18 cluding any enlargement of existing obligations or commit-
19 ments, except if required by law) with respect to the agen-
20 cies and programs described in subsection (a) is termi-
21 nated effective on the date of the enactment of this title.

22 **SEC. 2208. EFFECTIVE DATE.**

23 (a) IN GENERAL.—Except as provided in subsection
24 (b), this subtitle shall take effect on the abolishment date
25 specified in section 2101(c).

1 (b) PROVISIONS EFFECTIVE ON DATE OF ENACT-
2 MENT.—The following provisions of this subtitle shall take
3 effect on the date of the enactment of this Act:

4 (1) Section 2201.

5 (2) Section 2205(g), except as otherwise pro-
6 vided in that section.

7 (3) Section 2207(b).

8 (4) This section.

9 **Subtitle C—Office of United States**
10 **Trade Representative**

11 **CHAPTER 1—GENERAL PROVISIONS**

12 **SEC. 2301. DEFINITIONS.**

13 For purposes of this subtitle—

14 (1) the term “Office” means the Office of the
15 United States Trade Representative;

16 (2) the term “Federal agency” has the meaning
17 given to the term “agency” by section 551(1) of title
18 5, United States Code; and

19 (3) the term “USTR” means the United States
20 Trade Representative as provided for under section
21 2311.

1 **CHAPTER 2—OFFICE OF UNITED STATES**
2 **TRADE REPRESENTATIVE**
3 **Subchapter A—Establishment**

4 **SEC. 2311. ESTABLISHMENT OF THE OFFICE.**

5 (a) IN GENERAL.—The Office of the United States
6 Trade Representative is established as an independent es-
7 tablishment in the executive branch of Government as de-
8 fined under section 104 of title 5, United States Code.
9 The United States Trade Representative shall be the head
10 of the Office and shall be appointed by the President, by
11 and with the advice and consent of the Senate.

12 (b) AMBASSADOR STATUS.—The USTR shall have
13 the rank and status of Ambassador and shall represent
14 the United States in all trade negotiations conducted by
15 the Office.

16 (c) CONTINUED SERVICE OF CURRENT USTR.—The
17 individual serving as United States Trade Representative
18 on the date immediately preceding the effective date of
19 this subtitle may continue to serve as USTR under sub-
20 section (a).

21 (d) SUCCESSOR TO THE DEPARTMENT OF COM-
22 MERCE.—The Office shall be the successor to the Depart-
23 ment of Commerce for purposes of protocol.

1 **SEC. 2312. FUNCTIONS OF THE USTR.**

2 (a) IN GENERAL.—In addition to the functions trans-
3 ferred to the USTR by this subtitle, such other functions
4 as the President may assign or delegate to the USTR, and
5 such other functions as the USTR may, after the effective
6 date of this subtitle, be required to carry out by law, the
7 USTR shall—

8 (1) serve as the principal advisor to the Presi-
9 dent on international trade policy and advise the
10 President on the impact of other policies of the
11 United States Government on international trade;

12 (2) exercise primary responsibility, with the ad-
13 vice of the interagency organization established
14 under section 242 of the Trade Expansion Act of
15 1962, for developing and implementing international
16 trade policy, including commodity matters and, to
17 the extent related to international trade policy, di-
18 rect investment matters and, in exercising such re-
19 sponsibility, advance and implement, as the primary
20 mandate of the Office, the goals of the United
21 States to—

22 (A) maintain United States leadership in
23 international trade liberalization and expansion
24 efforts;

25 (B) reinvigorate the ability of the United
26 States economy to compete in international

1 markets and to respond flexibly to changes in
2 international competition; and

3 (C) expand United States participation in
4 international trade through aggressive pro-
5 motion and marketing of goods and services
6 that are products of the United States;

7 (3) exercise lead responsibility for the conduct
8 of international trade negotiations, including nego-
9 tiations relating to commodity matters and, to the
10 extent that such negotiations are related to inter-
11 national trade, direct investment negotiations;

12 (4) exercise lead responsibility for the establish-
13 ment of a national export strategy, including policies
14 designed to implement such strategy;

15 (5) with the advice of the interagency organiza-
16 tion established under section 242 of the Trade Ex-
17 pansion Act of 1962, issue policy guidance to other
18 Federal agencies on international trade, commodity,
19 and direct investment functions to the extent nec-
20 essary to assure the coordination of international
21 trade policy;

22 (6) seek and promote new opportunities for
23 United States products and services to compete in
24 the world marketplace;

1 (7) assist small businesses in developing export
2 markets;

3 (8) enforce the laws of the United States relat-
4 ing to trade;

5 (9) analyze economic trends and developments;

6 (10) report directly to the Congress—

7 (A) on the administration of, and matters
8 pertaining to, the trade agreements program
9 under the Omnibus Trade and Competitiveness
10 Act of 1988, the Trade Act of 1974, the Trade
11 Expansion Act of 1962, section 350 of the Tar-
12 iff Act of 1930, and any other provision of law
13 enacted after this Act; and

14 (B) with respect to other important issues
15 pertaining to international trade;

16 (11) keep each official adviser to the United
17 States delegations to international conferences,
18 meetings, and negotiation sessions relating to trade
19 agreements who is appointed from the Committee on
20 Finance of the Senate or the Committee on Ways
21 and Means of the House of Representatives under
22 section 161 of the Trade Act of 1974 currently in-
23 formed on United States negotiating objectives with
24 respect to trade agreements, the status of negotia-
25 tions in progress with respect to such agreements,

1 and the nature of any changes in domestic law or
2 the administration thereof which the USTR may
3 recommend to the Congress to carry out any trade
4 agreement;

5 (12) consult and cooperate with State and local
6 governments and other interested parties on inter-
7 national trade matters of interest to such govern-
8 ments and parties, and to the extent related to inter-
9 national trade matters, on investment matters, and,
10 when appropriate, hold informal public hearings;

11 (13) serve as the principal advisor to the Presi-
12 dent on Government policies designed to contribute
13 to enhancing the ability of United States industry
14 and services to compete in international markets;

15 (14) develop recommendations for national
16 strategies and specific policies intended to enhance
17 the productivity and international competitiveness of
18 United States industries;

19 (15) serve as the principal advisor to the Presi-
20 dent in identifying and assessing the consequences
21 of any Government policies that adversely affect, or
22 have the potential to adversely affect, the inter-
23 national competitiveness of United States industries
24 and services;

1 (16) promote cooperation between business,
2 labor, and Government to improve industrial per-
3 formance and the ability of United States industries
4 to compete in international markets and to facilitate
5 consultation and communication between the Gov-
6 ernment and the private sector about domestic in-
7 dustrial performance and prospects and the perform-
8 ance and prospects of foreign competitors; and

9 (17) monitor and enforce foreign government
10 compliance with international trade agreements to
11 protect United States interests.

12 (b) INTERAGENCY ORGANIZATION.—The USTR shall
13 be the chairperson of the interagency organization estab-
14 lished under section 242 of the Trade Expansion Act of
15 1962.

16 (c) NATIONAL SECURITY COUNCIL.—The USTR
17 shall be a member of the National Security Council.

18 (d) ADVISORY COUNCIL.—The USTR shall be Dep-
19 uty Chairman of the National Advisory Council on Inter-
20 national Monetary and Financial Policies established
21 under Executive Order 11269, issued February 14, 1966.

22 (e) AGRICULTURE.—(1) The USTR shall consult
23 with the Secretary of Agriculture or the designee of the
24 Secretary of Agriculture on all matters that potentially in-
25 volve international trade in agricultural products.

1 (2) If an international meeting for negotiation or con-
2 sultation includes discussion of international trade in agri-
3 cultural products, the USTR or the designee of the USTR
4 shall be Chairman of the United States delegation to such
5 meeting and the Secretary of Agriculture or the designee
6 of such Secretary shall be Vice Chairman. The provisions
7 of this paragraph shall not limit the authority of the
8 USTR under subsection (h) to assign to the Secretary of
9 Agriculture responsibility for the conduct of, or participa-
10 tion in, any trade negotiation or meeting.

11 (f) TRADE PROMOTION.—The USTR shall be the
12 chairperson of the Trade Promotion Coordinating Com-
13 mittee.

14 (g) NATIONAL ECONOMIC COUNCIL.—The USTR
15 shall be a member of the National Economic Council es-
16 tablished under Executive Order No. 12835, issued Janu-
17 ary 25, 1993.

18 (h) INTERNATIONAL TRADE NEGOTIATIONS.—Ex-
19 cept where expressly prohibited by law, the USTR, at the
20 request or with the concurrence of the head of any other
21 Federal agency, may assign the responsibility for conduct-
22 ing or participating in any specific international trade ne-
23 gotiation or meeting to the head of such agency whenever
24 the USTR determines that the subject matter of such

1 international trade negotiation is related to the functions
2 carried out by such agency.

3 **Subchapter B—Officers**

4 **SEC. 2321. DEPUTY ADMINISTRATOR OF THE OFFICE.**

5 (a) ESTABLISHMENT.—There shall be in the Office
6 the Deputy Administrator of the Office of the United
7 States Trade Representative, who shall be appointed by
8 the President, by and with the advice and consent of the
9 Senate.

10 (b) ABSENCE, DISABILITY, OR VACANCY OF
11 USTR.—The Deputy Administrator of the Office of the
12 United States Trade Representative shall act for and exer-
13 cise the functions of the USTR during the absence or dis-
14 ability of the USTR or in the event the office of the USTR
15 becomes vacant. The Deputy Administrator shall act for
16 and exercise the functions of the USTR until the absence
17 or disability of the USTR no longer exists or a successor
18 to the USTR has been appointed by the President and
19 confirmed by the Senate.

20 (c) FUNCTIONS OF DEPUTY ADMINISTRATOR.—The
21 Deputy Administrator of the Office of the United States
22 Trade Representative shall exercise all functions, under
23 the direction of the USTR, transferred to or established
24 in the Office, except those functions exercised by the Dep-
25 uty United States Trade Representatives, the Director

1 General for Export Promotion, the Inspector General, and
2 the General Counsel of the Office, as provided by this sub-
3 title.

4 **SEC. 2322. DEPUTY UNITED STATES TRADE REPRESENTA-**
5 **TIVES.**

6 (a) ESTABLISHMENT.—There shall be in the Office
7 2 Deputy United States Trade Representatives, who shall
8 be appointed by the President, by and with the advice and
9 consent of the Senate. The Deputy United States Trade
10 Representatives shall exercise all functions under the di-
11 rection of the USTR, and shall include—

12 (1) the Deputy United States Trade Represent-
13 ative for Negotiations; and

14 (2) the Deputy United States Trade Represent-
15 ative to the World Trade Organization.

16 (b) FUNCTIONS OF DEPUTY UNITED STATES TRADE
17 REPRESENTATIVES.—(1) The Deputy United States
18 Trade Representative for Negotiations shall exercise all
19 functions transferred under section 2331 and shall have
20 the rank and status of Ambassador.

21 (2) The Deputy United States Trade Representative
22 to the World Trade Organization shall exercise all func-
23 tions relating to representation to the World Trade Orga-
24 nization and shall have the rank and status of Amba-
25 sador.

1 **SEC. 2323. ASSISTANT ADMINISTRATORS.**

2 (a) ESTABLISHMENT.—There shall be in the Office
3 3 Assistant Administrators, who shall be appointed by the
4 President, by and with the advice and consent of the Sen-
5 ate. The Assistant Administrators shall exercise all func-
6 tions under the direction of the Deputy Administrator of
7 the Office of the United States Trade Representative and
8 include—

9 (1) the Assistant Administrator for Export Ad-
10 ministration;

11 (2) the Assistant Administrator for Import Ad-
12 ministration; and

13 (3) the Assistant Administrator for Trade and
14 Policy Analysis.

15 (b) FUNCTIONS OF ASSISTANT ADMINISTRATORS.—

16 (1) The Assistant Administrator for Export Administra-
17 tion shall exercise all functions transferred under section
18 2332(1)(C).

19 (2) The Assistant Administrator for Import Adminis-
20 tration shall exercise all functions transferred under sec-
21 tion 2332(1)(D).

22 (3) The Assistant Administrator for Trade and Policy
23 Analysis shall exercise all functions transferred under sec-
24 tion 2332(1)(B) and all functions transferred under sec-
25 tion 2332(2).

1 **SEC. 2324. DIRECTOR GENERAL FOR EXPORT PROMOTION.**

2 (a) ESTABLISHMENT.—There shall be a Director
3 General for Export Promotion, who shall be appointed by
4 the President, by and with the advice and consent of the
5 Senate.

6 (b) FUNCTIONS.—The Director General for Export
7 Promotion shall exercise, under the direction of the
8 USTR, all functions transferred under sections
9 2332(1)(A) (relating to functions of the United States and
10 Foreign Commercial Service) and 2333 and shall have the
11 rank and status of Ambassador.

12 **SEC. 2325. GENERAL COUNSEL.**

13 There shall be in the Office a General Counsel, who
14 shall be appointed by the President, by and with the advice
15 and consent of the Senate. The General Counsel shall pro-
16 vide legal assistance to the USTR concerning the activi-
17 ties, programs, and policies of the Office.

18 **SEC. 2326. INSPECTOR GENERAL.**

19 There shall be in the Office an Inspector General who
20 shall be appointed in accordance with the Inspector Gen-
21 eral Act of 1978, as amended by section 2371(b) of this
22 Act.

23 **SEC. 2327. CHIEF FINANCIAL OFFICER.**

24 There shall be in the Office a Chief Financial Officer
25 who shall be appointed in accordance with section 901 of
26 title 31, United States Code, as amended by section

1 2371(e) of this Act. The Chief Financial Officer shall per-
2 form all functions prescribed by the Deputy Administrator
3 of the Office of the United States Trade Representative,
4 under the direction of the Deputy Administrator.

5 **Subchapter C—Transfers to the Office**

6 **SEC. 2331. OFFICE OF THE UNITED STATES TRADE REP-**
7 **RESENTATIVE.**

8 There are transferred to the USTR all functions of
9 the United States Trade Representative and the Office of
10 the United States Trade Representative in the Executive
11 Office of the President and all functions of any officer or
12 employee of such Office.

13 **SEC. 2332. TRANSFERS FROM THE DEPARTMENT OF COM-**
14 **MERCE.**

15 There are transferred to the USTR the following
16 functions:

17 (1) All functions of, and all functions performed
18 under the direction of, the following officers and em-
19 ployees of the Department of Commerce:

20 (A) The Under Secretary of Commerce for
21 International Trade, and the Director General
22 of the United States and Foreign Commercial
23 Service, relating to all functions exercised by
24 the Service.

1 (B) The Assistant Secretary of Commerce
2 for International Economic Policy and the As-
3 sistant Secretary of Commerce for Trade Devel-
4 opment.

5 (C) The Under Secretary of Commerce for
6 Export Administration.

7 (D) The Assistant Secretary of Commerce
8 for Import Administration.

9 (2) All functions of the Secretary of Commerce
10 relating to the National Trade Data Bank.

11 (3) All functions of the Secretary of Commerce
12 under the Tariff Act of 1930, the Uruguay Round
13 Agreements Act, the Trade Act of 1974, and other
14 trade-related Acts for which responsibility is not oth-
15 erwise assigned under this subtitle.

16 **SEC. 2333. TRADE AND DEVELOPMENT AGENCY.**

17 There are transferred to the Director General for Ex-
18 port Promotion all functions of the Director of the Trade
19 and Development Agency. There are transferred to the Of-
20 fice of the Director General for Export Promotion all func-
21 tions of the Trade and Development Agency.

22 **SEC. 2334. EXPORT-IMPORT BANK.**

23 (a) IN GENERAL.—(1) There are transferred to the
24 USTR all functions of the Secretary of Commerce relating
25 to the Export-Import Bank of the United States.

1 (2) Section 3(c)(1) of the Export-Import Bank Act
2 of 1945 (12 U.S.C. 635a(c)(1)) is amended to read as fol-
3 lows:

4 “(c)(1) There shall be a Board of Directors of the
5 Bank consisting of the United States Trade Representa-
6 tive (who shall serve as Chairman), the President of the
7 Export-Import Bank of the United States (who shall serve
8 as Vice Chairman), the first Vice President, and 2 addi-
9 tional persons appointed by the President of the United
10 States, by and with the advice and consent of the Sen-
11 ate.”.

12 (b) EX OFFICIO MEMBER OF EXPORT-IMPORT BANK
13 BOARD OF DIRECTORS.—The Director General for Export
14 Promotion shall serve as an ex officio nonvoting member
15 of the Board of Directors of the Export-Import Bank.

16 (c) AMENDMENTS TO RELATED BANKING AND
17 TRADE ACTS.—Section 2301(h) of the Omnibus Trade
18 and Competitiveness Act of 1988 (15 U.S.C. 4721(h)) is
19 amended to read as follows:

20 “(h) ASSISTANCE TO EXPORT-IMPORT BANK.—The
21 Commercial Service shall provide such services as the Di-
22 rector General for Export Promotion of the Office of the
23 United States Trade Representative determines necessary
24 to assist the Export-Import Bank of the United States to

1 carry out the lending, loan guarantee, insurance, and
2 other activities of the Bank.”.

3 **SEC. 2335. OVERSEAS PRIVATE INVESTMENT CORPORA-**
4 **TION.**

5 (a) BOARD OF DIRECTORS.—The second and third
6 sentences of section 233(b) of the Foreign Assistance Act
7 of 1961 (22 U.S.C. 2193(b)) are amended to read as fol-
8 lows: “The United States Trade Representative shall be
9 the Chairman of the Board. The Administrator of the
10 Agency for International Development (who shall serve as
11 Vice Chairman) shall serve on the Board.”.

12 (b) EX OFFICIO MEMBER OF OVERSEAS PRIVATE IN-
13 VESTMENT CORPORATION BOARD OF DIRECTORS.—The
14 Director General for Export Promotion shall serve as an
15 ex officio nonvoting member of the Board of Directors of
16 the Overseas Private Investment Corporation.

17 **SEC. 2336. CONSOLIDATION OF EXPORT PROMOTION AND**
18 **FINANCING ACTIVITIES.**

19 (a) SUBMISSION OF PLAN.—Within 180 days after
20 the date of the enactment of this Act, the President shall
21 transmit to the Congress a comprehensive plan to consoli-
22 date Federal nonagricultural export promotion activities
23 and export financing activities and to transfer those func-
24 tions to the Office. The plan shall provide for—

1 (1) the elimination of the overlap and duplica-
2 tion among all Federal nonagricultural export pro-
3 motion activities and export financing activities;

4 (2) a unified budget for Federal nonagricultural
5 export promotion activities which eliminates funding
6 for the areas of overlap and duplication identified
7 under paragraph (1); and

8 (3) a long-term agenda for developing better co-
9 operation between local, State and Federal programs
10 and activities designed to stimulate or assist United
11 States businesses in exporting nonagricultural goods
12 or services that are products of the United States,
13 including sharing of facilities, costs, and export mar-
14 ket research data.

15 (b) PLAN ELEMENTS.—The plan under subsection
16 (a) shall—

17 (1) place all Federal nonagricultural export pro-
18 motion activities and export financing activities with-
19 in the Office;

20 (2) provide clear authority for the USTR to use
21 the expertise and assistance of other United States
22 Government agencies;

23 (3) achieve an overall 25 percent reduction in
24 the amount of funding for all Federal non-

1 agricultural export promotion activities within 2
2 years after the enactment of this Act;

3 (4) include any functions of the Department of
4 Commerce not transferred by this subtitle, or of
5 other Federal departments the transfer of which to
6 the Office would be necessary to the competitiveness
7 of the United States in international trade; and

8 (5) assess the feasibility and potential savings
9 resulting from—

10 (A) the consolidation of the Export-Import
11 Bank of the United States and the Overseas
12 Private Investment Corporation;

13 (B) the consolidation of the Boards of Di-
14 rectors of the Export-Import Bank and the
15 Overseas Private Investment Corporation; and

16 (C) the consolidation of the Trade and De-
17 velopment Agency with the consolidations under
18 subparagraphs (A) and (B).

19 (c) DEFINITION.—As used in this section, the term
20 “Federal nonagricultural export promotion activities”
21 means all programs or activities of any department or
22 agency of the Federal Government (including, but not lim-
23 ited to, departments and agencies with representatives on
24 the Trade Promotion Coordinating Committee established
25 under section 2312 of the Export Enhancement Act of

1 1988 (15 U.S.C. 4727)) that are designed to stimulate
2 or assist United States businesses in exporting non-
3 agricultural goods or services that are products of the
4 United States, including trade missions.

5 **SEC. 2337. ADDITIONAL TRADE FUNCTIONS.**

6 (a) TERMINATION OF AUTHORIZATIONS OF APPRO-
7 PRIATIONS.—

8 (1) NAFTA SECRETARIAT.—Section 105(b) of
9 the North American Free Trade Agreement Imple-
10 mentation Act (19 U.S.C. 3315(b)) is amended by
11 striking “each fiscal year after fiscal year 1993” and
12 inserting “each of fiscal years 1994 and 1995”.

13 (2) BORDER ENVIRONMENT COOPERATION COM-
14 MISSION.—Section 533(a)(2) of the North American
15 Free Trade Agreement Implementation Act (19
16 U.S.C. 3473(a)(2)) is amended by striking “and
17 each fiscal year thereafter” and inserting “fiscal
18 year 1995”.

19 (b) FUNCTIONS RELATED TO TEXTILE AGREE-
20 MENTS.—

21 (1) FUNCTIONS OF CITA.—(A) Subject to sub-
22 paragraph (B), those functions delegated to the
23 Committee for the Implementation of Textile Agree-
24 ments established under Executive Order 11651 (7

1 U.S.C. 1854 note) (hereafter in this subsection re-
2 ferred to as “CITA”) are transferred to the USTR.

3 (B) Those functions delegated to CITA that re-
4 late to the assessment of the impact of textile im-
5 ports on domestic industry are transferred to the
6 International Trade Commission. The International
7 Trade Commission shall make a determination pur-
8 suant to the preceding sentence within 60 days after
9 receiving a complaint or request for an investigation.

10 (2) ABOLITION OF CITA.—CITA is abolished.

11 **Subchapter D—Administrative Provisions**

12 **SEC. 2341. PERSONNEL PROVISIONS.**

13 (a) APPOINTMENTS.—The USTR may appoint and
14 fix the compensation of such officers and employees, in-
15 cluding investigators, attorneys, and administrative law
16 judges, as may be necessary to carry out the functions
17 of the USTR and the Office. Except as otherwise provided
18 by law, such officers and employees shall be appointed in
19 accordance with the civil service laws and their compensa-
20 tion fixed in accordance with title 5, United States Code.

21 (b) POSITIONS ABOVE GS–15.—(1) At the request
22 of the USTR, the Director of the Office of Personnel Man-
23 agement shall, under section 5108 of title 5, United States
24 Code, provide for the establishment in a grade level above
25 GS–15 of the General Service, and in the Senior Executive

1 Service, of a number of positions in the Office equal to
2 the number of positions in that grade level which were
3 used primarily for the performance of functions and of-
4 fices transferred by this subtitle and which were assigned
5 and filled on the day before the effective date of this sub-
6 title.

7 (2) Appointments to positions provided for under this
8 subsection may be made without regard to the provisions
9 of section 3324 of title 5, United States Code, if the indi-
10 vidual appointed in such position is an individual who is
11 transferred in connection with the transfer of functions
12 and offices under this subtitle and, on the day before the
13 effective date of this subtitle, holds a position and has du-
14 ties comparable to those of the position to which appointed
15 under this subsection.

16 (3) The authority under this subsection with respect
17 to any position established at a grade level above GS-15
18 shall terminate when the person first appointed to fill such
19 position ceases to hold such position.

20 (4) For purposes of section 414(a)(3)(A) of the Civil
21 Service Reform Act of 1978, an individual appointed
22 under this subsection shall be deemed to occupy the same
23 position as the individual occupied on the day before the
24 effective date of this subtitle.

1 (c) EXPERTS AND CONSULTANTS.—The USTR may
2 obtain the services of experts and consultants in accord-
3 ance with section 3109 of title 5, United States Code, and
4 compensate such experts and consultants for each day (in-
5 cluding traveltime) at rates not in excess of the maximum
6 rate of pay for a position above GS–15 of the General
7 Schedule under section 5332 of such title. The USTR may
8 pay experts and consultants who are serving away from
9 their homes or regular place of business travel expenses
10 and per diem in lieu of subsistence at rates authorized
11 by sections 5702 and 5703 of such title for persons in
12 Government service employed intermittently.

13 (d) VOLUNTARY SERVICES.—(1)(A) The USTR is
14 authorized to accept voluntary and uncompensated serv-
15 ices without regard to the provisions of section 1342 of
16 title 31, United States Code, if such services will not be
17 used to displace Federal employees employed on a full-
18 time, part-time, or seasonal basis.

19 (B) The USTR is authorized to accept volunteer serv-
20 ice in accordance with the provisions of section 3111 of
21 title 5, United States Code.

22 (2) The USTR is authorized to provide for incidental
23 expenses, including but not limited to transportation, lodg-
24 ing, and subsistence for individuals who provide voluntary
25 services under subparagraph (A) or (B) of paragraph (1).

1 (3) An individual who provides voluntary services
2 under paragraph (1)(A) shall not be considered a Federal
3 employee for any purpose other than for purposes of chap-
4 ter 81 of title 5, United States Code, relating to com-
5 pensation for work injuries, and chapter 171 of title 28,
6 United States Code, relating to tort claims.

7 (e) FOREIGN SERVICE POSITIONS.—In order to as-
8 sure United States representation in trade matters at a
9 level commensurate with the level of representation main-
10 tained by industrial nations which are major trade com-
11 petitors of the United States, the Secretary of State shall
12 classify certain positions at Foreign Service posts as com-
13 mercial minister positions and shall assign members of the
14 Foreign Service performing functions of the Office, with
15 the concurrence of the USTR, to such positions in nations
16 which are major trade competitors of the United States.
17 The Secretary of State shall obtain and use the rec-
18 ommendations of the USTR with respect to the number
19 of positions to be so classified under this subsection.

20 **SEC. 2342. DELEGATION AND ASSIGNMENT.**

21 Except where otherwise expressly prohibited by law
22 or otherwise provided by this subtitle, the USTR may dele-
23 gate any of the functions transferred to the USTR by this
24 subtitle and any function transferred or granted to the
25 USTR after the effective date of this subtitle to such offi-

1 cers and employees of the Office as the USTR may des-
2 ignate, and may authorize successive redelegations of such
3 functions as may be necessary or appropriate. No delega-
4 tion of functions by the USTR under this section or under
5 any other provision of this subtitle shall relieve the USTR
6 of responsibility for the administration of such functions.

7 **SEC. 2343. SUCCESSION.**

8 (a) ORDER OF SUCCESSION.—Subject to the author-
9 ity of the President, and except as provided in section
10 2321(b), the USTR shall prescribe the order by which offi-
11 cers of the Office who are appointed by the President, by
12 and with the advice and consent of the Senate, shall act
13 for, and perform the functions of, the USTR or any other
14 officer of the Office appointed by the President, by and
15 with the advice and consent of the Senate, during the ab-
16 sence or disability of the USTR or such other officer, or
17 in the event of a vacancy in the office of the USTR or
18 such other officer.

19 (b) CONTINUATION.—Notwithstanding any other pro-
20 vision of law, and unless the President directs otherwise,
21 an individual acting for the USTR or another officer of
22 the Office pursuant to subsection (a) shall continue to
23 serve in that capacity until the absence or disability of
24 the USTR or such other officer no longer exists or a suc-

cessor to the USTR or such other officer has been appointed by the President and confirmed by the Senate.

SEC. 2344. REORGANIZATION.

(a) IN GENERAL.—Subject to subsection (b), the USTR is authorized to allocate or reallocate functions among the officers of the Office, and to establish, consolidate, alter, or discontinue such organizational entities in the Office as may be necessary or appropriate.

(b) EXCEPTION.—The USTR may not exercise the authority under subsection (a) to establish, consolidate, alter, or discontinue any organizational entity in the Office or allocate or reallocate any function of an officer or employee of the Office that is inconsistent with any specific provision of this subtitle.

SEC. 2345. RULES.

The USTR is authorized to prescribe, in accordance with the provisions of chapters 5 and 6 of title 5, United States Code, such rules and regulations as the USTR determines necessary or appropriate to administer and manage the functions of the USTR or the Office.

SEC. 2346. FUNDS TRANSFER.

The USTR may, when authorized in an appropriation Act in any fiscal year, transfer funds from one appropriation to another within the Office, except that no appropriation for any fiscal year shall be either increased or

1 decreased by more than 10 percent and no such transfer
2 shall result in increasing any such appropriation above the
3 amount authorized to be appropriated therefor.

4 **SEC. 2347. CONTRACTS, GRANTS, AND COOPERATIVE**
5 **AGREEMENTS.**

6 (a) IN GENERAL.—Subject to the provisions of the
7 Federal Property and Administrative Services Act of
8 1949, the USTR may make, enter into, and perform such
9 contracts, leases, cooperative agreements, grants, or other
10 similar transactions with public agencies, private organiza-
11 tions, and persons, and make payments (in lump sum or
12 installments, and by way of advance or reimbursement,
13 and, in the case of any grant, with necessary adjustments
14 on account of overpayments and underpayments) as the
15 USTR considers necessary or appropriate to carry out the
16 functions of the USTR or the Office.

17 (b) EXCEPTION.—Notwithstanding any other provi-
18 sion of this subtitle, the authority to enter into contracts
19 or to make payments under this subchapter shall be effec-
20 tive only to such extent or in such amounts as are provided
21 in advance in appropriation Acts. This subsection does not
22 apply with respect to the authority granted under section
23 2349.

1 **SEC. 2348. USE OF FACILITIES.**

2 (a) USE BY USTR.—With their consent, the USTR,
3 with or without reimbursement, may use the research,
4 services, equipment, and facilities of—

5 (1) an individual,

6 (2) any public or private nonprofit agency or
7 organization, including any agency or instrumental-
8 ity of the United States or of any State, the District
9 of Columbia, the Commonwealth of Puerto Rico, or
10 any territory or possession of the United States,

11 (3) any political subdivision of any State, the
12 District of Columbia, the Commonwealth of Puerto
13 Rico, or any territory or possession of the United
14 States, or

15 (4) any foreign government,

16 in carrying out any function of the USTR or the Office.

17 (b) USE OF USTR FACILITIES.—The USTR, under
18 terms, at rates, and for periods that the USTR considers
19 to be in the public interest, may permit the use by public
20 and private agencies, corporations, associations or other
21 organizations, or individuals, of any real property, or any
22 facility, structure or other improvement thereon, under the
23 custody of the USTR. The USTR may require permittees
24 under this section to maintain or recondition, at their own
25 expense, the real property, facilities, structures, and im-
26 provements used by such permittees.

1 **SEC. 2349. GIFTS AND BEQUESTS.**

2 (a) IN GENERAL.—The USTR is authorized to ac-
3 cept, hold, administer, and utilize gifts and bequests of
4 property, both real and personal, for the purpose of aiding
5 or facilitating the work of the Office. Gifts and bequests
6 of money and the proceeds from sales of other property
7 received as gifts or bequests shall be deposited in the Unit-
8 ed States Treasury in a separate fund and shall be dis-
9 bursed on order of the USTR. Property accepted pursuant
10 to this subsection, and the proceeds thereof, shall be used
11 as nearly as possible in accordance with the terms of the
12 gift or bequest.

13 (b) TAX TREATMENT.—For the purpose of Federal
14 income, estate, and gift taxes, and State taxes, property
15 accepted under subsection (a) shall be considered a gift
16 or bequest to or for the use of the United States.

17 (c) INVESTMENT.—Upon the request of the USTR,
18 the Secretary of the Treasury may invest and reinvest in
19 securities of the United States or in securities guaranteed
20 as to principal and interest by the United States any mon-
21 eys contained in the fund provided for in subsection (a).
22 Income accruing from such securities, and from any other
23 property held by the USTR pursuant to subsection (a),
24 shall be deposited to the credit of the fund, and shall be
25 disbursed upon order of the USTR.

1 **SEC. 2350. WORKING CAPITAL FUND.**

2 (a) ESTABLISHMENT.—The USTR is authorized to
3 establish for the Office a working capital fund, to be avail-
4 able without fiscal year limitation, for expenses necessary
5 for the maintenance and operation of such common ad-
6 ministrative services as the USTR shall find to be desir-
7 able in the interest of economy and efficiency, including—

8 (1) a central supply service for stationery and
9 other supplies and equipment for which adequate
10 stocks may be maintained to meet in whole or in
11 part the requirements of the Office and its compo-
12 nents;

13 (2) central messenger, mail, and telephone serv-
14 ice and other communications services;

15 (3) office space and central services for docu-
16 ment reproduction and for graphics and visual aids;

17 (4) a central library service; and

18 (5) such other services as may be approved by
19 the Director of the Office of Management and Budg-
20 et.

21 (b) OPERATION OF FUND.—The capital of the fund
22 shall consist of any appropriations made for the purpose
23 of providing working capital and the fair and reasonable
24 value of such stocks of supplies, equipment, and other as-
25 sets and inventories on order as the USTR may transfer
26 to the fund, less the related liabilities and unpaid obliga-

1 tions. The fund shall be reimbursed in advance from avail-
2 able funds of agencies and offices in the Office, or from
3 other sources, for supplies and services at rates which will
4 approximate the expense of operation, including the ac-
5 crual of annual leave and the depreciation of equipment.
6 The fund shall also be credited with receipts from sale or
7 exchange of property and receipts in payment for loss or
8 damage to property owned by the fund. There shall be cov-
9 ered into the United States Treasury as miscellaneous re-
10 ceipts any surplus of the fund (all assets, liabilities, and
11 prior losses considered) above the amounts transferred or
12 appropriated to establish and maintain the fund. There
13 shall be transferred to the fund the stocks of supplies,
14 equipment, other assets, liabilities, and unpaid obligations
15 relating to those services which the USTR determines will
16 be performed.

17 **SEC. 2351. SERVICE CHARGES.**

18 (a) **AUTHORITY.**—Notwithstanding any other provi-
19 sion of law, the USTR may establish reasonable fees and
20 commissions with respect to applications, documents,
21 awards, loans, grants, research data, services, and assist-
22 ance administered by the Office, and the USTR may
23 change and abolish such fees and commissions. Before es-
24 tablishing, changing, or abolishing any schedule of fees or

1 commissions under this section, the USTR may submit
2 such schedule to the Congress.

3 (b) DEPOSITS.—The USTR is authorized to require
4 a deposit before the USTR provides any item, information,
5 service, or assistance for which a fee or commission is re-
6 quired under this section.

7 (c) DEPOSIT OF MONEYS.—Moneys received under
8 this section shall be deposited in the Treasury in a special
9 account for use by the USTR and are authorized to be
10 appropriated and made available until expended.

11 (d) FACTORS IN ESTABLISHING FEES AND COMMIS-
12 SIONS.—In establishing reasonable fees or commissions
13 under this section, the USTR may take into account—

14 (1) the actual costs which will be incurred in
15 providing the items, information, services, or assist-
16 ance concerned;

17 (2) the efficiency of the Government in provid-
18 ing such items, information, services, or assistance;

19 (3) the portion of the cost that will be incurred
20 in providing such items, information, services, or as-
21 sistance which may be attributed to benefits for the
22 general public rather than exclusively for the person
23 to whom the items, information, services, or assist-
24 ance is provided;

1 (4) any public service which occurs through the
 2 provision of such items, information, services, or as-
 3 sistance; and

4 (5) such other factors as the USTR considers
 5 appropriate.

6 (e) REFUNDS OF EXCESS PAYMENTS.—In any case
 7 in which the USTR determines that any person has made
 8 a payment which is not required under this section or has
 9 made a payment which is in excess of the amount required
 10 under this section, the USTR, upon application or other-
 11 wise, may cause a refund to be made from applicable
 12 funds.

13 **SEC. 2352. SEAL OF OFFICE.**

14 The USTR shall cause a seal of office to be made
 15 for the Office of such design as the USTR shall approve.
 16 Judicial notice shall be taken of such seal.

17 **Subchapter E—Related Agencies**

18 **SEC. 2361. INTERAGENCY TRADE ORGANIZATION.**

19 Section 242(a)(3) of the Trade Expansion Act of
 20 1962 (19 U.S.C. 1872(a)(3)) is amended to read as fol-
 21 lows:

22 “(3)(A) The interagency organization estab-
 23 lished under subsection (a) shall be composed of—

24 “(i) the United States Trade Representa-
 25 tive, who shall be the chairperson,

1 “(ii) the Secretary of Agriculture,
2 “(iii) the Secretary of the Treasury,
3 “(iv) the Secretary of Labor,
4 “(v) the Secretary of State, and
5 “(vi) the representatives of such other de-
6 partments and agencies as the United States
7 Trade Representative shall designate.

8 “(B) The United States Trade Representative
9 may invite representatives from other agencies, as
10 appropriate, to attend particular meetings if subject
11 matters of specific functional interest to such agen-
12 cies are under consideration. It shall meet at such
13 times and with respect to such matters as the Presi-
14 dent or the chairperson shall direct.”.

15 **SEC. 2362. NATIONAL SECURITY COUNCIL.**

16 The fourth paragraph of section 101(a) of the Na-
17 tional Security Act of 1947 (50 U.S.C. 402(a)) is amend-
18 ed—

19 (1) by redesignating clauses (5), (6), and (7) as
20 clauses (6), (7), and (8), respectively; and

21 (2) by inserting after clause (4) the following
22 new clause:

23 “(5) the United States Trade Representative;”.

1 **SEC. 2363. INTERNATIONAL MONETARY FUND.**

2 Section 3 of the Bretton Woods Agreement Act is
3 amended by adding at the end the following new sub-
4 section:

5 “(e) The United States executive director of the Fund
6 shall consult with the United States Trade Representative
7 with respect to matters under consideration by the Fund
8 which relate to trade.”.

9 **Subchapter F—Conforming Amendments**

10 **SEC. 2371. AMENDMENTS TO GENERAL PROVISIONS.**

11 (a) INSPECTOR GENERAL.—The Inspector General
12 Act of 1978 is amended—

13 (1) in subsection 9(a)(1) by inserting after sub-
14 paragraph (W) the following:

15 “(X) of the United States Trade Rep-
16 resentative, all functions of the Inspector Gen-
17 eral of the Department of Commerce and the
18 Office of the Inspector General of the Depart-
19 ment of Commerce relating to the functions
20 transferred to the United States Trade Rep-
21 resentative by section 2332 of the Department
22 of Commerce Dismantling Act; and”;

23 (2) in section 11—

24 (A) in paragraph (1) by inserting “the
25 United States Trade Representative;” after
26 “the Attorney General;”; and

1 (B) in paragraph (2) by inserting “the Of-
2 fice of the United States Trade Representa-
3 tive,” after “Treasury;”.

4 (b) AMENDMENT TO THE TRADE ACT OF 1974.—(1)
5 Chapter 4 of title I of the Trade Act of 1974 is amended
6 to read as follows:

7 **“CHAPTER 4—REPRESENTATION IN**
8 **TRADE NEGOTIATIONS**

9 **“SEC. 141. FUNCTIONS OF THE UNITED STATES TRADE REP-**
10 **RESENTATIVE.**

11 “The United States Trade Representative established
12 under section 2311 of the Department of Commerce Dis-
13 mantling Act shall—

14 “(1) be the chief representative of the United
15 States for each trade negotiation under this title or
16 chapter 1 of title III of this Act, or subtitle A of
17 title I of the Omnibus Trade and Competitiveness
18 Act of 1988, or any other provision of law enacted
19 after the Department of Commerce Dismantling Act;

20 “(2) report directly to the President and the
21 Congress, and be responsible to the President and
22 the Congress for the administration of trade agree-
23 ments programs under this Act, the Omnibus Trade
24 and Competitiveness Act of 1988, the Trade Expan-
25 sion Act of 1962, section 350 of the Tariff Act of

1 1930, and any other provision of law enacted after
2 the Department of Commerce Dismantling Act;

3 “(3) advise the President and the Congress
4 with respect to nontariff barriers to international
5 trade, international commodity agreements, and
6 other matters which are related to the trade agree-
7 ments programs; and

8 “(4) be responsible for making reports to Con-
9 gress with respect to the matters set forth in para-
10 graphs (1) and (2).”.

11 (2) The table of contents in the first section of the
12 Trade Act of 1974 is amended by striking the items relat-
13 ing to chapter 4 and section 141 and inserting the follow-
14 ing:

“CHAPTER 4—REPRESENTATION IN TRADE NEGOTIATIONS

“Sec. 141. Functions of the United States Trade Representative.”.

15 (d) FOREIGN SERVICE PERSONNEL.—The Foreign
16 Service Act of 1980 is amended by striking paragraph (3)
17 of section 202(a) (22 U.S.C. 3922(a)) and inserting the
18 following:

19 “(3) The United States Trade Representative
20 may utilize the Foreign Service personnel system in
21 accordance with this Act—

22 “(A) with respect to the personnel per-
23 forming functions—

1 “(i) which were transferred to the De-
2 partment of Commerce from the Depart-
3 ment of State by Reorganization Plan No.
4 3 of 1979; and

5 “(ii) which were subsequently trans-
6 ferred to the United States Trade Rep-
7 resentative by section 2332 of the Depart-
8 ment of Commerce Dismantling Act; and

9 “(B) with respect to other personnel of the
10 Office of United States Trade Representative to
11 the extent the President determines to be nec-
12 essary in order to enable the Office of the Unit-
13 ed States Trade Representative to carry out
14 functions which require service abroad.”.

15 (e) CHIEF FINANCIAL OFFICERS.—Section 901(b)(1)
16 of title 31, United States Code, is amended by adding at
17 the end the following:

18 “(Q) The Office of the United States
19 Trade Representative.”.

20 **SEC. 2372. REPEALS.**

21 Sections 1 and 2 of the Act of June 5, 1939 (15
22 U.S.C. 1502 and 1503; 53 Stat. 808), relating to the
23 Under Secretary of Commerce, are repealed.

1 **SEC. 2373. CONFORMING AMENDMENTS RELATING TO EX-**
2 **ECUTIVE SCHEDULE POSITIONS.**

3 (a) POSITIONS AT LEVEL I.—Section 5312 of title
4 5, United States Code, is amended by amending the item
5 relating to the United States Trade Representative to read
6 as follows:

7 “United States Trade Representative, Office of
8 the United States Trade Representative.”.

9 (b) POSITIONS AT LEVEL II.—Section 5313 of title
10 5, United States Code, is amended by adding at the end
11 the following:

12 “Deputy Administrator of the Office of the
13 United States Trade Representative.

14 “Deputy United States Trade Representatives,
15 Office of the United States Trade Representative
16 (2).”.

17 (c) POSITIONS AT LEVEL III.—Section 5314 of title
18 5, United States Code, is amended by adding at the end
19 the following:

20 “Assistant Administrators, Office of the United
21 States Trade Representative (3).

22 “Director General for Export Promotion, Office
23 of the United States Trade Representative.”.

24 (d) POSITIONS AT LEVEL IV.—Section 5315 of title
25 5, United States Code, is amended—

1 (1) by striking the item relating to the Assist-
2 ant Secretary of Commerce and Director General of
3 the United States and Foreign Commercial Service;
4 and

5 (2) by adding at the end the following:

6 “General Counsel, Office of the United States
7 Trade Representative.

8 “Inspector General, Office of the United States
9 Trade Representative.

10 “Chief Financial Officer, Office of the United
11 States Trade Representative.”.

12 **Subchapter G—Miscellaneous**

13 **SEC. 2381. EFFECTIVE DATE.**

14 (a) IN GENERAL.—This subtitle shall take effect on
15 the effective date specified in section 2208(a), except
16 that—

17 (1) section 2336 shall take effect on the date of
18 the enactment of this Act; and

19 (2) at any time after the date of the enactment
20 of this Act the officers provided for in subchapter B
21 may be nominated and appointed, as provided in
22 such subchapter.

23 (b) INTERIM COMPENSATION AND EXPENSES.—
24 Funds available to the Department of Commerce or the
25 Office of the United States Trade Representative (or any

1 official or component thereof), with respect to the func-
2 tions transferred by this subtitle, may be used, with ap-
3 proval of the Director of the Office of Management and
4 Budget, to pay the compensation and expenses of an offi-
5 cer appointed under subsection (a) who will carry out such
6 functions until funds for that purpose are otherwise avail-
7 able.

8 **SEC. 2382. INTERIM APPOINTMENTS.**

9 (a) IN GENERAL.—If one or more officers required
10 by this subtitle to be appointed by and with the advice
11 and consent of the Senate have not entered upon office
12 on the effective date of this subtitle and notwithstanding
13 any other provision of law, the President may designate
14 any officer who was appointed by and with the advice and
15 consent of the Senate, and who was such an officer on
16 the day before the effective date of this subtitle, to act
17 in the office until it is filled as provided by this subtitle.

18 (b) COMPENSATION.—Any officer acting in an office
19 pursuant to subsection (a) shall receive compensation at
20 the rate prescribed by this subtitle for such office.

21 **SEC. 2383. FUNDING REDUCTIONS RESULTING FROM REOR-**
22 **GANIZATION.**

23 (a) FUNDING REDUCTIONS.—Notwithstanding the
24 transfer of functions under this subtitle, and except as
25 provided in subsection (b), the total amount appropriated

1 by the United States in performing all functions vested
2 in the USTR and the Office pursuant to this subtitle shall
3 not exceed—

4 (1) for the first fiscal year that begins after the
5 abolishment date specified in section 2101(c), 75
6 percent of the total amount appropriated in fiscal
7 year 1995 for the performance of all such functions;
8 and

9 (2) for the second fiscal year that begins after
10 the abolishment date specified in section 2101(c)
11 and for each fiscal year thereafter, 65 percent of the
12 total amount appropriated in fiscal year 1995 for
13 the performance of all such functions.

14 (b) EXCEPTION.—Subsection (a) shall not apply to
15 obligations or expenditures incurred as a direct con-
16 sequence of the termination, transfer, or other disposition
17 of functions described in subsection (a) pursuant to this
18 title.

19 (c) RULE OF CONSTRUCTION.—This section shall
20 take precedence over any other provision of law unless
21 such provision explicitly refers to this section and makes
22 an exception to it.

23 (d) RESPONSIBILITY OF USTR.—The USTR, in con-
24 sultation with the Director of the Office of Management
25 and Budget, shall make such modifications in programs

1 as are necessary to carry out the reductions in appropria-
 2 tions set forth in paragraph (1) and (2) of subsection (a).

3 (e) RESPONSIBILITIES OF THE DIRECTOR OF THE
 4 OFFICE OF MANAGEMENT AND BUDGET.—The Director
 5 of the Office of Management and Budget shall include in
 6 each report under sections 2105(a) and (b) a description
 7 of actions taken to comply with the requirements of this
 8 section.

9 **Subtitle D—Patent and Trademark** 10 **Office Corporation**

11 **SEC. 2401. SHORT TITLE.**

12 This subtitle may be cited as the “Patent and Trade-
 13 mark Office Corporation Act of 1995”.

14 **CHAPTER 1—PATENT AND TRADEMARK** 15 **OFFICE**

16 **SEC. 2411. ESTABLISHMENT OF PATENT AND TRADEMARK** 17 **OFFICE AS A CORPORATION.**

18 Section 1 of title 35, United States Code, is amended
 19 to read as follows:

20 **“§ 1. Establishment**

21 “(a) ESTABLISHMENT.—The Patent and Trademark
 22 Office is established as a wholly owned Government cor-
 23 poration subject to chapter 91 of title 31, except as other-
 24 wise provided in this title.

1 “(b) OFFICES.—The Patent and Trademark Office
2 shall maintain an office in the District of Columbia, or
3 the metropolitan area thereof, for the service of process
4 and papers and shall be deemed, for purposes of venue
5 in civil actions, to be a resident of the district in which
6 its principal office is located. The Patent and Trademark
7 Office may establish offices in such other places as it con-
8 sider necessary or appropriate in the conduct of its busi-
9 ness.

10 “(c) REFERENCE.—For purposes of this title, the
11 Patent and Trademark Office shall also be referred to as
12 the ‘Office’.”.

13 **SEC. 2412. POWERS AND DUTIES.**

14 Section 2 of title 35, United States Code, is amended
15 to read as follows:

16 **“§ 2. Powers and Duties**

17 “(a) IN GENERAL.—The Patent and Trademark Of-
18 fice shall be responsible for—

19 “(1) the granting and issuing of patents and
20 the registration of trademarks;

21 “(2) conducting studies, programs, or ex-
22 changes of items or services regarding domestic and
23 international patent and trademark law or the ad-
24 ministration of the Office, including programs to
25 recognize, identify, assess, and forecast the tech-

1 nology of patented inventions and their utility to in-
2 dustry;

3 “(3) authorizing or conducting studies and pro-
4 grams cooperatively with foreign patent and trade-
5 mark offices and international organizations, in con-
6 nection with the granting and issuing of patents and
7 the registration of trademarks; and

8 “(4) disseminating to the public information
9 with respect to patents and trademarks.

10 “(b) SPECIFIC POWERS.—The Office—

11 “(1) shall have perpetual succession;

12 “(2) shall adopt and use a corporate seal, which
13 shall be judicially noticed and with which letters pat-
14 ent, certificates of trademark registrations, and pa-
15 pers issued by the Office shall be authenticated;

16 “(3) may sue and be sued in its corporate name
17 and be represented by its own attorneys in all judi-
18 cial and administrative proceedings, subject to the
19 provisions of section 8 of this title;

20 “(4) may indemnify the Commissioner of Pat-
21 ents and Trademarks, and other officers, attorneys,
22 agents, and employees (including members of the
23 Management Advisory Board established in section
24 5) of the Office for liabilities and expenses incurred
25 within the scope of their employment;

1 “(5) may adopt, amend, and repeal bylaws,
2 rules, and regulations, governing the manner in
3 which its business will be conducted and the powers
4 granted to it by law will be exercised;

5 “(6) may acquire, construct, purchase, lease,
6 hold, manage, operate, improve, alter, and renovate
7 any real, personal, or mixed property, or any interest
8 therein, as it considers necessary to carry out its
9 functions;

10 “(7)(A) may make such purchases, contracts
11 for the construction, maintenance, or management
12 and operation of facilities, and contracts for supplies
13 or services, without regard to section 111 of the
14 Federal Property and Administrative Services Act of
15 1949 (40 U.S.C. 759); and

16 “(B) may enter into and perform such pur-
17 chases and contracts for printing services, including
18 the process of composition, platemaking, presswork,
19 silk screen processes, binding, microform, and the
20 products of such processes, as it considers necessary
21 to carry out the functions of the Office, without re-
22 gard to sections 501 through 517 and 1101 through
23 1123 of title 44;

24 “(8) may use, with their consent, services,
25 equipment, personnel, and facilities of other depart-

1 ments, agencies, and instrumentalities of the Fed-
2 eral Government, on a reimbursable basis, and co-
3 operate with such other departments, agencies, and
4 instrumentalities in the establishment and use of
5 services, equipment, and facilities of the Office;

6 “(9) may obtain from the Administrator of
7 General Services such services as the Administrator
8 is authorized to provide to other agencies of the
9 United States, on the same basis as those services
10 are provided to other agencies of the United States;

11 “(10) may use, with the consent of the United
12 States and the agency, government, or international
13 organization concerned, the services, records, facili-
14 ties, or personnel of any State or local government
15 agency or instrumentality or foreign government or
16 international organization to perform functions on
17 its behalf;

18 “(11) may determine the character of and the
19 necessity for its obligations and expenditures and
20 the manner in which they shall be incurred, allowed,
21 and paid, subject to the provisions of this title and
22 the Act of July 5, 1946 (commonly referred to as
23 the ‘Trademark Act of 1946’);

24 “(12) may retain and use all of its revenues
25 and receipts, including revenues from the sale, lease,

1 or disposal of any real, personal, or mixed property,
2 or any interest therein, of the Office, in carrying out
3 the functions of the Office, including for research
4 and development and capital investment, subject to
5 the provisions of section 10101 of the Omnibus
6 Budget Reconciliation Act of 1990 (35 U.S.C. 41
7 note);

8 “(13) shall have the priority of the United
9 States with respect to the payment of debts from
10 bankrupt, insolvent, and decedents’ estates;

11 “(14) may accept monetary gifts or donations
12 of services, or of real, personal, or mixed property,
13 in order to carry out the functions of the Office;

14 “(15) may execute, in accordance with its by-
15 laws, rules, and regulations, all instruments nec-
16 essary and appropriate in the exercise of any of its
17 powers;

18 “(16) may provide for liability insurance and
19 insurance against any loss in connection with its
20 property, other assets, or operations either by con-
21 tract or by self-insurance; and

22 “(17) shall pay any settlement or judgment en-
23 tered against it from the funds of the Office and not
24 from amounts available under section 1304 of title
25 31.”.

1 **SEC. 2413. ORGANIZATION AND MANAGEMENT.**

2 Section 3 of title 35, United States Code, is amended
3 to read as follows:

4 **“§ 3. Officers and employees**

5 **“(a) COMMISSIONER.—**

6 **“(1) IN GENERAL.—**The management of the
7 Patent and Trademark Office shall be vested in a
8 Commissioner of Patents and Trademarks (hereafter
9 in this title referred to as the ‘Commissioner’), who
10 shall be a citizen of the United States and who shall
11 be appointed by the President, by and with the ad-
12 vice and consent of the Senate. The Commissioner
13 shall be a person who, by reason of professional
14 background and experience in patent and trademark
15 law, is especially qualified to manage the Office.

16 **“(2) DUTIES.—**

17 **“(A) IN GENERAL.—**The Commissioner
18 shall be responsible for the management and di-
19 rection of the Office, including the issuance of
20 patents and the registration of trademarks.

21 **“(B) ADVISING THE PRESIDENT.—**The
22 Commissioner shall advise the President of all
23 activities of the Patent and Trademark Office
24 undertaken in response to obligations of the
25 United States under treaties and executive
26 agreements, or which relate to cooperative pro-

1 grams with those authorities of foreign govern-
2 ments that are responsible for granting patents
3 or registering trademarks. The Commissioner
4 shall also recommend to the President changes
5 in law or policy which may improve the ability
6 of United States citizens to secure and enforce
7 patent rights or trademark rights in the United
8 States or in foreign countries.

9 “(C) CONSULTING WITH THE MANAGE-
10 MENT ADVISORY BOARD.—The Commissioner
11 shall consult with the Management Advisory
12 Board established in section 5 on a regular
13 basis on matters relating to the operation of the
14 Patent and Trademark Office, and shall consult
15 with the Board before submitting budgetary
16 proposals to the Office of Management and
17 Budget or changing or proposing to change pat-
18 ent or trademark user fees or patent or trade-
19 mark regulations.

20 “(D) SECURITY CLEARANCES.—The Com-
21 missioner, in consultation with the Director of
22 the Office of Personnel Management, shall
23 maintain a program for identifying national se-
24 curity positions and providing for appropriate
25 security clearances.

1 “(3) TERM.—The Commissioner shall serve a
2 term of 5 years, and may continue to serve after the
3 expiration of the Commissioner’s term until a suc-
4 cessor is appointed and assumes office. The Com-
5 missioner may be reappointed to subsequent terms.

6 “(4) OATH.—The Commissioner shall, before
7 taking office, take an oath to discharge faithfully the
8 duties of the Office.

9 “(5) COMPENSATION.—The Commissioner shall
10 receive compensation at the rate of pay in effect for
11 Level III of the Executive Schedule under section
12 5314 of title 5.

13 “(6) REMOVAL.—The Commissioner may be re-
14 moved from office by the President only for cause.

15 “(7) DESIGNEE OF COMMISSIONER.—The Com-
16 missioner shall designate an officer of the Office who
17 shall be vested with the authority to act in the ca-
18 pacity of the Commissioner in the event of the ab-
19 sence or incapacity of the Commissioner.

20 “(b) OFFICERS AND EMPLOYEES OF THE OFFICE.—

21 “(1) DEPUTY COMMISSIONERS.—The Commis-
22 sioner shall appoint a Deputy Commissioner for Pat-
23 ents and a Deputy Commissioner for Trademarks
24 for terms that shall expire on the date on which the
25 Commissioner’s term expires. The Deputy Commis-

1 sioner for Patents shall be a person with dem-
2 onstrated experience in patent law and the Deputy
3 Commissioner for Trademarks shall be a person with
4 demonstrated experience in trademark law. The
5 Deputy Commissioner for Patents and the Deputy
6 Commissioner for Trademarks shall be the principal
7 policy advisors to the Commissioner on all aspects of
8 the activities of the Office that affect the adminis-
9 tration of patent and trademark operations, respec-
10 tively.

11 “(2) OTHER OFFICERS AND EMPLOYEES.—The
12 Commissioner shall—

13 “(A) appoint an Inspector General and
14 such other officers, employees (including attor-
15 neys), and agents of the Office as the Commis-
16 sioner considers necessary to carry out its func-
17 tions;

18 “(B) fix the compensation of such officers
19 and employees; and

20 “(C) define the authority and duties of
21 such officers and employees and delegate to
22 them such of the powers vested in the Office as
23 the Commissioner may determine.

24 The Office shall not be subject to any administra-
25 tively or statutorily imposed limitation on positions

1 or personnel, and no positions or personnel of the
2 Office shall be taken into account for purposes of
3 applying any such limitation, except to the extent
4 otherwise specifically provided by statute with re-
5 spect to the Office.

6 “(c) LIMITS ON COMPENSATION.—Except as other-
7 wise provided in this title or any other provision of law,
8 the basic pay of an officer or employee of the Office for
9 any calendar year may not exceed the annual rate of basic
10 pay in effect for level IV of the Executive Schedule under
11 section 5315 of title 5. The Commissioner shall by regula-
12 tion establish a limitation on the total compensation pay-
13 able to officers or employees of the Office, which may not
14 exceed the annual rate of basic pay in effect for level I
15 of the Executive Schedule under section 5312 of title 5.

16 “(d) INAPPLICABILITY OF TITLE 5 GENERALLY.—
17 Except as otherwise provided in this section, officers and
18 employees of the Office shall not be subject to the provi-
19 sions of title 5 relating to Federal employees.

20 “(e) CONTINUED APPLICABILITY OF CERTAIN PRO-
21 VISION OF TITLE 5.—The following provisions of title 5
22 shall apply to the Office and its officers and employees:

23 “(1) Section 3110 (relating to employment of
24 relatives; restrictions).

1 “(2) Subchapter II of chapter 55 (relating to
2 withholding pay).

3 “(3) Subchapter II of chapter 73 (relating to
4 employment limitations).

5 “(f) PROVISIONS OF TITLE 5 RELATING TO CERTAIN
6 BENEFITS.—

7 “(1) RETIREMENT.—(A)(i) Any individual who
8 becomes an officer or employee of the Office pursu-
9 ant to subsection (h) shall, if such individual has at
10 least 3 years of creditable service (within the mean-
11 ing of section 8332 or 8411 of title 5) as of the ef-
12 fective date of the Patent and Trademark Office
13 Corporation Act of 1995, remain subject to sub-
14 chapter III of chapter 83 or chapter 84 of such title,
15 as the case may be, so long as such individual con-
16 tinues to hold an office or position in or under the
17 Office without a break in service.

18 “(ii)(I) Except as provided in subclause (II),
19 with respect to an individual described in clause (i),
20 the Office shall make the appropriate withholding
21 from pay and shall pay the contributions required of
22 an employing agency into the Civil Service Retirement
23 and Disability Fund and, if applicable, the
24 Thrift Savings Fund in accordance with applicable

1 provisions of subchapter III of chapter 83 or chapter
2 84 of title 5, as the case may be.

3 “(II) In the case of an officer or employee who
4 remains subject to subchapter III of chapter 83 of
5 such title by virtue of this subparagraph, the Office
6 shall, instead of the amount which would otherwise
7 be required under the second sentence of section
8 8334(a)(1) of title 5, contribute an amount equal to
9 the normal-cost percentage (determined with respect
10 to officers and employees of the Office using dy-
11 namic assumptions, as defined by section 8401(9) of
12 such title) of the individual’s basic pay, minus the
13 amount required to be withheld from such pay under
14 such section 8334(a)(1).

15 “(B)(i) Notwithstanding subsection (d), the
16 provisions of subchapter III of chapter 83 or chapter
17 84 of title 5 (as applicable) which relate to disability
18 shall be considered to remain in effect, with respect
19 to an individual who becomes an officer or employee
20 of the Office pursuant to subsection (h), until the
21 end of the 2-year period beginning on the effective
22 date of the Patent and Trademark Office Corpora-
23 tion Act of 1995 or, if earlier, until such individual
24 satisfies the prerequisites for coverage under any
25 program offered by the Office to replace the disabil-

1 ity retirement program under chapter 83 or 84 of
2 title 5.

3 “(ii) This clause applies with respect to any of-
4 ficer or employee of the Office who is receiving dis-
5 ability coverage under this subparagraph and has
6 completed the service requirement specified in the
7 first sentence of section 8337(a) or 8451(a)(1)(A) of
8 title 5 (as applicable), but who is not described in
9 subparagraph (A)(i). In the case of any individual to
10 whom this clause applies, the Office shall pay into
11 the Civil Service Retirement and Disability Fund an
12 amount equal to that portion of the normal-cost per-
13 centage (determined in the same manner as under
14 subparagraph (A)(ii)(II)) of the basic pay of such
15 individual (for service performed during the period
16 during which such individual is receiving such cov-
17 erage) allocable to such coverage. Any amounts pay-
18 able under this clause shall be paid at such time and
19 in such manner as mutually agreed to by the Office
20 and the Office of Personnel Management, and shall
21 be in lieu of any individual or agency contributions
22 otherwise required.

23 “(2) HEALTH BENEFITS.—(A) Officers and em-
24 ployees of the Office shall not become ineligible to
25 participate in the health benefits program under

1 chapter 89 of title 5 by reason of subsection (d)
2 until the effective date of elections made during the
3 first election period (under section 8905(f) of title 5)
4 beginning after the end of the 2-year period begin-
5 ning on the effective date of the Patent and Trade-
6 mark Office Corporation Act of 1995.

7 “(B)(i) With respect to any individual who be-
8 comes an officer or employee of the Office pursuant
9 to subsection (h), the eligibility of such individual to
10 participate in such program as an annuitant (or of
11 any other person to participate in such program as
12 an annuitant based on the death of such individual)
13 shall be determined disregarding the requirements of
14 section 8905(b) of title 5. The preceding sentence
15 shall not apply if the individual ceases to be an offi-
16 cer or employee of the Office for any period of time
17 after becoming an officer or employee of the Office
18 pursuant to subsection (h) and before separation.

19 “(ii) The Government contributions authorized
20 by section 8906 for health benefits for anyone par-
21 ticipating in the health benefits program pursuant to
22 this subparagraph shall be made by the Office in the
23 same manner as provided under section 8906(g)(2)
24 of title 5 with respect to the United States Postal
25 Service for individuals associated therewith.

1 “(iii) For purposes of this subparagraph, the
2 term ‘annuitant’ has the meaning given such term
3 by section 8901(3) of title 5.

4 “(3) LIFE INSURANCE.—(A) Officers and em-
5 ployees of the Office shall not become ineligible to
6 participate in the life insurance program under
7 chapter 87 of title 5 by reason of subsection (d)
8 until the first day after the end of the 2-year period
9 beginning on the effective date of the Patent and
10 Trademark Office Corporation Act of 1995.

11 “(B)(i) Eligibility for life insurance coverage
12 after retirement or while in receipt of compensation
13 under subchapter I of chapter 81 of title 5 shall be
14 determined, in the case of any individual who be-
15 comes an officer or employee of the Office pursuant
16 to subsection (h), without regard to the require-
17 ments of section 8706(b) (1) or (2), but subject to
18 the condition specified in the last sentence of para-
19 graph (2)(B)(i) of this subsection.

20 “(ii) Government contributions under section
21 8708(d) on behalf of any such individual shall be
22 made by the Office in the same manner as provided
23 under paragraph (3) thereof with respect to the
24 United States Postal Service for individuals associ-
25 ated therewith.

1 “(4) EMPLOYEES’ COMPENSATION FUND.—The
2 Office shall remain responsible for reimbursing the
3 Employees’ Compensation Fund, pursuant to section
4 8147 of title 5, for compensation paid or payable
5 after the effective date of the Patent and Trademark
6 Office Corporation Act of 1995 in accordance with
7 chapter 81 of title 5 with regard to any injury, dis-
8 ability, or death due to events arising before such
9 date, whether or not a claim has been filed or is
10 final on such date.

11 “(5) REQUIREMENT THAT THE OFFICE OFFER
12 CERTAIN MINIMUM NUMBER OF LIFE AND HEALTH
13 INSURANCE POLICIES.—The Office shall offer at
14 least 1 life insurance policy and at least 3 health in-
15 surance policies to its officers and employees, com-
16 parable to existing Federal benefits, beginning on
17 the first day after the end of the 2-year period be-
18 ginning on the effective date of the Patent and
19 Trademark Office Corporation Act of 1995.

20 “(g) LABOR-MANAGEMENT RELATIONS.—

21 “(1) LABOR RELATIONS AND EMPLOYEE RELA-
22 TIONS PROGRAMS.—The Office shall develop labor
23 relations and employee relations programs with the
24 objective of improving productivity and efficiency, in-
25 corporating the following principles:

1 “(A) Such programs shall be consistent
2 with the merit principles in section 2301(b) of
3 title 5.

4 “(B) Such programs shall provide veterans
5 preference protections equivalent to those estab-
6 lished by sections 2801, 3308–3318, and 3320
7 of title 5.

8 “(C)(i) In order to maximize individual
9 freedom of choice in the pursuit of employment
10 and to encourage an economic climate condu-
11 cive to economic growth, the right to work shall
12 not be subject to undue restraint or coercion.
13 The right to work shall not be infringed or re-
14 stricted in any way based on membership in, af-
15 filiation with, or financial support of a labor or-
16 ganization.

17 “(ii) No person shall be required, as a con-
18 dition of employment or continuation of employ-
19 ment:

20 “(I) To resign or refrain from vol-
21 untary membership in, voluntary affiliation
22 with, or voluntary financial support of a
23 labor organization.

24 “(II) To become or remain a member
25 of a labor organization.

1 “(III) To pay any dues, fees, assess-
2 ments, or other charges of any kind or
3 amount to a labor organization.

4 “(IV) To pay to any charity or other
5 third party, in lieu of such payments, any
6 amount equivalent to or a pro-rata portion
7 of dues, fees, assessments, or other charges
8 regularly required of members of a labor
9 organization.

10 “(V) To be recommended, approved,
11 referred, or cleared by or through a labor
12 organization.

13 “(iii) This subparagraph shall not apply to
14 a person described in section 7103(a)(2)(v) of
15 title 5 or a ‘supervisor’, ‘management official’,
16 or ‘confidential employee’ as those terms are
17 defined in 7103(a)(10), (11), and (13) of such
18 title.

19 “(iv) Any labor organization recognized by
20 the Office as the exclusive representative of a
21 unit of employees of the Office shall represent
22 the interests of all employees in that unit with-
23 out discrimination and without regard to labor
24 organization membership.

1 “(2) ADOPTION OF EXISTING LABOR AGREE-
2 MENTS.—The Office shall adopt all labor agreements
3 which are in effect, as of the day before the effective
4 date of the Patent and Trademark Office Corpora-
5 tion Act of 1995, with respect to such Office (as
6 then in effect). Each such agreement shall remain in
7 effect for the 2-year period commencing on such
8 date, unless the agreement provides for a shorter du-
9 ration or the parties agree otherwise before such pe-
10 riod ends.

11 “(h) CARRYOVER OF PERSONNEL.—

12 “(1) FROM PTO.—Effective as of the effective
13 date of the Patent and Trademark Office Corpora-
14 tion Act of 1995, all officers and employees of the
15 Patent and Trademark Office on the day before
16 such effective date shall become officers and employ-
17 ees of the Office, without a break in service.

18 “(2) OTHER PERSONNEL.—Any individual who,
19 on the day before the effective date of the Patent
20 and Trademark Office Corporation Act of 1995, is
21 an officer or employee of the Department of Com-
22 merce (other than an officer or employee under
23 paragraph (1)) shall be transferred to the Office if—

24 “(A) such individual serves in a position
25 for which a major function is the performance

1 of work reimbursed by the Patent and Trade-
2 mark Office, as determined by the Secretary of
3 Commerce;

4 “(B) such individual serves in a position
5 that performed work in support of the Patent
6 and Trademark Office during at least half of
7 the incumbent’s work time, as determined by
8 the Secretary of Commerce; or

9 “(C) such transfer would be in the interest
10 of the Office, as determined by the Secretary of
11 Commerce in consultation with the Commis-
12 sioner of Patents and Trademarks.

13 Any transfer under this paragraph shall be effective
14 as of the same effective date as referred to in para-
15 graph (1), and shall be made without a break in
16 service.

17 “(3) ACCUMULATED LEAVE.—The amount of
18 sick and annual leave and compensatory time accu-
19 mulated under title 5 before the effective date de-
20 scribed in paragraph (1), by officers or employees of
21 the Patent and Trademark Office who so become of-
22 ficers or employees of the Office, are obligations of
23 the Office.

24 “(4) TERMINATION RIGHTS.—Any employee re-
25 ferred to in paragraph (1) or (2) of this subsection

1 whose employment with the Office is terminated
2 during the 2-year period beginning on the effective
3 date of the Patent and Trademark Office Corpora-
4 tion Act of 1995 shall be entitled to rights and bene-
5 fits, to be afforded by the Office, similar to those
6 such employee would have had under Federal law if
7 termination had occurred immediately before such
8 date. An employee who would have been entitled to
9 appeal any such termination to the Merit Systems
10 Protection Board, if such termination had occurred
11 immediately before such effective date, may appeal
12 any such termination occurring within this 2-year
13 period to the Board under such procedures as it may
14 prescribe.

15 “(5) CONTINUATION IN OFFICE OF CERTAIN
16 OFFICERS.—(A) The individual serving as the Com-
17 missioner of Patents and Trademarks on the day be-
18 fore the effective date of the Patent and Trademark
19 Office Corporation Act of 1995 may serve as the
20 Commissioner until the earlier of 1 year after the ef-
21 fective date of that Act or the date on which a Com-
22 missioner is appointed under subsection (a).

23 “(B) The individual serving as the Assistant
24 Commissioner for Patents on the day before the ef-
25 fective date of the Patent and Trademark Office

1 Corporation Act of 1995 may serve as the Deputy
2 Commissioner for Patents until the earlier of 1 year
3 after the effective date of that Act or the date on
4 which a Deputy Commissioner for Patents is ap-
5 pointed under subsection (b).

6 “(C) The individual serving as the Assistant
7 Commissioner for Trademarks on the day before the
8 effective date of the Patent and Trademark Office
9 Corporation Act of 1995 may serve as the Deputy
10 Commissioner for Trademarks until the earlier of 1
11 year after the effective date of that Act or the date
12 on which a Deputy Commissioner for Trademarks is
13 appointed under subsection (b).

14 “(i) COMPETITIVE STATUS.—For purposes of ap-
15 pointment to a position in the competitive service for
16 which an officer or employee of the Office is qualified,
17 such officer or employee shall not forfeit any competitive
18 status, acquired by such officer or employee before the ef-
19 fective date of the Patent and Trademark Office Corpora-
20 tion Act of 1995, by reason of becoming an officer or em-
21 ployee of the Office pursuant to subsection (h).

22 “(j) SAVINGS PROVISIONS.—All orders, determina-
23 tions, rules, and regulations regarding compensation and
24 benefits and other terms and conditions of employment,
25 in effect for the Office and its officers and employees im-

1 mediately before the effective date of the Patent and
2 Trademark Office Corporation Act of 1995, shall continue
3 in effect with respect to the Office and its officers and
4 employees until modified, superseded, or set aside by the
5 Office or a court of appropriate jurisdiction or by oper-
6 ation of law.”.

7 **SEC. 2414. MANAGEMENT ADVISORY BOARD.**

8 Chapter 1 of part I of title 35, United States Code,
9 is amended by inserting after section 4 the following:

10 **“§ 5. Patent and Trademark Office Management Advi-**
11 **sory Board**

12 “(a) ESTABLISHMENT OF MANAGEMENT ADVISORY
13 BOARD.—

14 “(1) APPOINTMENT.—The Patent and Trade-
15 mark Office shall have a Management Advisory
16 Board (hereafter in this title referred to as the
17 ‘Board’) of 12 members, 4 of whom shall be ap-
18 pointed by the President, 4 of whom shall be ap-
19 pointed by the Speaker of the House of Representa-
20 tives, and 4 of whom shall be appointed by the
21 President pro tempore of the Senate. Not more than
22 3 of the 4 members appointed by each appointing
23 authority shall be members of the same political
24 party.

1 “(2) TERMS.—Members of the Board shall be
2 appointed for a term of 4 years each, except that of
3 the members first appointed by each appointing au-
4 thority, 1 shall be for a term of 1 year, 1 shall be
5 for a term of 2 years, and 1 shall be for a term of
6 3 years. No member may serve more than 1 term.

7 “(3) CHAIR.—The President shall designate the
8 chair of the Board, whose term as chair shall be for
9 3 years.

10 “(4) TIMING OF APPOINTMENTS.—Initial ap-
11 pointments to the Board shall be made within 3
12 months after the effective date of the Patent and
13 Trademark Office Corporation Act of 1995, and va-
14 cancies shall be filled within 3 months after they
15 occur.

16 “(5) VACANCIES.—Vacancies shall be filled in
17 the manner in which the original appointment was
18 made under this subsection. Members appointed to
19 fill a vacancy occurring before the expiration of the
20 term for which the member’s predecessor was ap-
21 pointed shall be appointed only for the remainder of
22 that term. A member may serve after the expiration
23 of that member’s term until a successor is ap-
24 pointed.

1 “(b) BASIS FOR APPOINTMENTS.—Members of the
2 Board shall be citizens of the United States who shall be
3 chosen so as to represent the interests of diverse users
4 of the Patent and Trademark Office, and shall include in-
5 dividuals with substantial background and achievement in
6 corporate finance and management.

7 “(c) APPLICABILITY OF CERTAIN ETHICS LAWS.—
8 Members of the Board shall be special Government em-
9 ployees within the meaning of section 202 of title 18.

10 “(d) MEETINGS.—The Board shall meet at the call
11 of the chair to consider an agenda set by the chair.

12 “(e) DUTIES.—The Board shall—

13 “(1) review the policies, goals, performance,
14 budget, and user fees of the Patent and Trademark
15 Office, and advise the Commissioner on these mat-
16 ters; and

17 “(2) within 60 days after the end of each fiscal
18 year, prepare an annual report on the matters re-
19 ferred to in paragraph (1), transmit the report to
20 the President and the Committees on the Judiciary
21 of the Senate and the House of Representatives, and
22 publish the report in the Patent and Trademark Of-
23 fice Official Gazette.

24 “(f) STAFF.—The Board shall employ a staff of not
25 more than 10 members and shall procure support services

1 for the staff adequate to enable the Board to carry out
2 its functions, using funds available to the Commissioner
3 under section 42 of this title. The Board shall ensure that
4 members of the staff, other than clerical staff, are espe-
5 cially qualified in the areas of patents, trademarks, or
6 management of public agencies. Persons employed by the
7 Board shall receive compensation as determined by the
8 Board, which may not exceed the limitations set forth in
9 section 3(c) of this title, shall serve in accordance with
10 terms and conditions of employment established by the
11 Board, and shall be subject solely to the direction of the
12 Board, notwithstanding any other provision of law.

13 “(g) COMPENSATION.—Members of the Board shall
14 be compensated for each day (including travel time) dur-
15 ing which they are attending meetings or conferences of
16 the Board or otherwise engaged in the business of the
17 Board, at the rate which is the daily equivalent of the an-
18 nual rate of basic pay in effect for level III of the Execu-
19 tive Schedule under section 5314 of title 5, and while away
20 from their homes or regular places of business they may
21 be allowed travel expenses, including per diem in lieu of
22 subsistence, as authorized by section 5703 of title 5.

23 “(h) ACCESS TO INFORMATION.—Members of the
24 Board shall be provided access to records and information
25 in the Patent and Trademark Office, except for personnel

1 or other privileged information and information concern-
2 ing patent applications required to be kept in confidence
3 by section 122 of this title.”.

4 **SEC. 2415. INDEPENDENCE FROM DEPARTMENT OF COM-**
5 **MERCE.**

6 (a) DUTIES OF COMMISSIONER.—Section 6 of title
7 35, United States Code, is amended—

8 (1) by striking “, under the direction of the
9 Secretary of Commerce,” each place it appears; and

10 (2) by striking “, subject to the approval of the
11 Secretary of Commerce,”.

12 (b) REGULATIONS FOR AGENTS AND ATTORNEYS.—
13 Section 31 of title 35, United States Code, is amended
14 by striking “, subject to the approval of the Secretary of
15 Commerce,”.

16 **SEC. 2416. TRADEMARK TRIAL AND APPEAL BOARD.**

17 Section 17 of the Act of July 5, 1946 (commonly re-
18 ferred to as the “Trademark Act of 1946”) (15 U.S.C.
19 1067) is amended to read as follows:

20 “SEC. 17. (a) In every case of interference, opposition
21 to registration, application to register as a lawful concur-
22 rent user, or application to cancel the registration of a
23 mark, the Commissioner shall give notice to all parties and
24 shall direct a Trademark Trial and Appeal Board to deter-
25 mine and decide the respective rights of registration.

1 “(b) The Trademark Trial and Appeal Board shall
2 include the Commissioner, the Deputy Commissioner for
3 Patents, the Deputy Commissioner for Trademarks, and
4 members competent in trademark law who are appointed
5 by the Commissioner.”.

6 **SEC. 2417. BOARD OF PATENT APPEALS AND INTER-**
7 **FERENCES.**

8 Section 7 of title 35, United States Code, is amended
9 to read as follows:

10 **“§ 7. Board of Patent Appeals and Interferences**

11 “(a) ESTABLISHMENT AND COMPOSITION.—There
12 shall be in the Patent and Trademark Office a Board of
13 Patent Appeals and Interferences. The Commissioner, the
14 Deputy Commissioner for Patents, the Deputy Commis-
15 sioner for Trademarks, and the examiners-in-chief shall
16 constitute the Board. The examiners-in-chief shall be per-
17 sons of competent legal knowledge and scientific ability.

18 “(b) DUTIES.—The Board of Patent Appeals and
19 Interferences shall, on written appeal of an applicant, re-
20 view adverse decisions of examiners upon applications for
21 patents and shall determine priority and patentability of
22 invention in interferences declared under section 135(a)
23 of this title. Each appeal and interference shall be heard
24 by at least 3 members of the Board, who shall be des-

1 ignated by the Commissioner. Only the Board of Patent
2 Appeals and Interferences may grant rehearings.”.

3 **SEC. 2418. SUITS BY AND AGAINST THE CORPORATION.**

4 Chapter 1 of part I of title 35, United States Code,
5 is amended—

6 (1) by redesignating sections 8 through 14 as
7 sections 9 through 15; and

8 (2) by inserting after section 7 the following
9 new section:

10 **“§ 8. Suits by and against the Corporation**

11 “(a) IN GENERAL.—

12 “(1) ACTIONS UNDER UNITED STATES LAW.—

13 Any civil action or proceeding to which the Patent
14 and Trademark Office is a party is deemed to arise
15 under the laws of the United States. The Federal
16 courts shall have exclusive jurisdiction over all civil
17 actions by or against the Office.

18 “(2) CONTRACT CLAIMS.—Any action or pro-
19 ceeding against the Office in which any claim is cog-
20 nizable under the Contract Disputes Act of 1978 (41
21 U.S.C. 601 and following) shall be subject to that
22 Act. For purposes of that Act, the Commissioner
23 shall be deemed to be the agency head with respect
24 to contract claims arising with respect to the Office.
25 Any other action or proceeding against the Office

1 founded upon contract may be brought in an appro-
2 priate district court, notwithstanding any provision
3 of title 28.

4 “(3) TORT CLAIMS.—(A) Any action or pro-
5 ceeding against the Office in which any claim is cog-
6 nizable under the provisions of section 1346(b) and
7 chapter 171 of title 28, shall be governed by those
8 provisions.

9 “(B) Any other action or proceeding against the
10 Office founded upon tort may be brought in an ap-
11 propriate district court without regard to the provi-
12 sions of section 1346(b) and chapter 171 of title 28.

13 “(4) PROHIBITION ON ATTACHMENT, LIENS,
14 ETC.—No attachment, garnishment, lien, or similar
15 process, intermediate or final, in law or equity, may
16 be issued against property of the Office.

17 “(5) SUBSTITUTION OF OFFICE AS PARTY.—
18 The Office shall be substituted as defendant in any
19 civil action or proceeding against an officer or em-
20 ployee of the Office, if the Office determines that the
21 officer or employee was acting within the scope of
22 his or her employment with the Office. If the Office
23 refuses to certify scope of employment, the officer or
24 employee may at any time before trial petition the
25 court to find and certify that the officer or employee

1 was acting within the scope of his or her employ-
2 ment. Upon certification by the court, the Office
3 shall be substituted as the party defendant. A copy
4 of the petition shall be served upon the Office. In
5 any such civil action or proceeding to which para-
6 graph (3)(A) applies, the provisions of section
7 1346(b) and chapter 171 of title 28 shall apply in
8 lieu of this paragraph.

9 “(b) RELATIONSHIP WITH JUSTICE DEPARTMENT.—

10 “(1) EXERCISE BY OFFICE OF ATTORNEY GEN-
11 ERAL’S AUTHORITIES.—Except as provided in this
12 section, with respect to any action or proceeding in
13 which the Office is a party or an officer or employee
14 thereof is a party in his or her official capacity, the
15 Office, officer, or employee may exercise, without
16 prior authorization from the Attorney General, the
17 authorities and duties that otherwise would be exer-
18 cised by the Attorney General on behalf of the Of-
19 fice, officer, or employee under title 28 and other
20 laws.

21 “(2) APPEARANCES BY ATTORNEY GENERAL.—

22 Notwithstanding paragraph (1), at any time the At-
23 torney General may, in any action or proceeding de-
24 scribed in paragraph (1), file an appearance on be-
25 half of the Office or the officer or employee involved,

1 without the consent of the Office or the officer or
2 employee. Upon such filing, the Attorney General
3 shall represent the Office or such officer or employee
4 with exclusive authority in the conduct, settlement,
5 or compromise of that action or proceeding.

6 “(3) CONSULTATIONS WITH AND ASSISTANCE
7 BY ATTORNEY GENERAL.—The Office may consult
8 with the Attorney General concerning any legal mat-
9 ter, and the Attorney General shall provide advice
10 and assistance to the Office, including representing
11 the Office in litigation, if requested by the Office.

12 “(4) REPRESENTATION BEFORE SUPREME
13 COURT.—The Attorney General shall represent the
14 Office in all cases before the United States Supreme
15 Court.

16 “(5) QUALIFICATIONS OF ATTORNEYS.—An at-
17 torney admitted to practice to the bar of the highest
18 court of at least one State in the United States or
19 the District of Columbia and employed by the Office
20 may represent the Office in any legal proceeding in
21 which the Office or an officer or employee of the Of-
22 fice is a party or interested, regardless of whether
23 the attorney is a resident of the jurisdiction in which
24 the proceeding is held and notwithstanding any
25 other prerequisites of qualification or appearance re-

1 quired by the court or administrative body before
2 which the proceeding is conducted.”.

3 **SEC. 2419. ANNUAL REPORT OF COMMISSIONER.**

4 Section 15 of title 35, United States Code, as redesign-
5 nated by section 2418 of this Act, is amended to read as
6 follows:

7 **“§ 15. Annual report to Congress**

8 “The Commissioner shall report to the Congress, not
9 later than 180 days after the end of each fiscal year, the
10 moneys received and expended by the Office, the purposes
11 for which the moneys were spent, the quality and quantity
12 of the work of the Office, and other information relating
13 to the Office. The report under this section shall also meet
14 the requirements of section 9106 of title 31, to the extent
15 that such requirements are not inconsistent with the pre-
16 ceding sentence. The report required under this section
17 shall be deemed to be the report of the Patent and Trade-
18 mark Office under section 9106 of title 31, and the Com-
19 missioner shall not file a separate report under such sec-
20 tion.”.

21 **SEC. 2420. SUSPENSION OR EXCLUSION FROM PRACTICE.**

22 Section 32 of title 35, United States Code, is amend-
23 ed by inserting before the last sentence the following: “The
24 Commissioner shall have the discretion to designate any
25 attorney who is an officer or employee of the Patent and

1 Trademark Office to conduct the hearing required by this
2 section.”.

3 **SEC. 2421. FUNDING.**

4 Section 42 of title 35, United States Code, is amend-
5 ed to read as follows:

6 **“§ 42. Patent and Trademark Office funding**

7 “(a) FEES PAYABLE TO THE OFFICE.—All fees for
8 services performed by or materials furnished by the Patent
9 and Trademark Office shall be payable to the Office.

10 “(b) USE OF MONEYS.—Moneys of the Patent and
11 Trademark Office not otherwise used to carry out the
12 functions of the Office shall be kept in cash on hand or
13 on deposit, or invested in obligations of the United States
14 or guaranteed by the United States, or in obligations or
15 other instruments which are lawful investments for fidu-
16 ciary, trust, or public funds. Fees available to the Commis-
17 sioner under this title shall be used exclusively for the
18 processing of patent applications and for other services
19 and materials relating to patents. Fees available to the
20 Commissioner under section 31 of the Act of July 5, 1946
21 (commonly referred to as the ‘Trademark Act of 1946’;
22 15 U.S.C. 1113), shall be used exclusively for the process-
23 ing of trademark registrations and for other services and
24 materials relating to trademarks.

1 “(c) BORROWING AUTHORITY.—The Patent and
2 Trademark Office is authorized to issue from time to time
3 for purchase by the Secretary of the Treasury its debentures,
4 bonds, notes, and other evidences of indebtedness
5 (hereafter in this subsection referred to as ‘obligations’)
6 to assist in financing its activities. Borrowing under this
7 subsection shall be subject to prior approval in appropriation
8 Acts. Such borrowing shall not exceed amounts approved in
9 appropriation Acts. Any such borrowing shall
10 be repaid only from fees paid to the Office and surcharges
11 appropriated by the Congress. Such obligations shall be
12 redeemable at the option of the Office before maturity in
13 the manner stipulated in such obligations and shall have
14 such maturity as is determined by the Office with the approval
15 of the Secretary of the Treasury. Each such obligation
16 issued to the Treasury shall bear interest at a rate
17 not less than the current yield on outstanding marketable
18 obligations of the United States of comparable maturity
19 during the month preceding the issuance of the obligation
20 as determined by the Secretary of the Treasury. The Secretary
21 of the Treasury shall purchase any obligations of
22 the Office issued under this subsection and for such purpose
23 the Secretary of the Treasury is authorized to use
24 as a public-debt transaction the proceeds of any securities
25 issued under chapter 31 of title 31, and the purposes for

1 which securities may be issued under that chapter are ex-
2 tended to include such purpose. Payment under this sub-
3 section of the purchase price of such obligations of the
4 Patent and Trademark Office shall be treated as public
5 debt transactions of the United States.”.

6 **SEC. 2422. AUDITS.**

7 Chapter 4 of part I of title 35, United States Code,
8 is amended by adding at the end the following new section:

9 **“§ 43. Audits**

10 “(a) IN GENERAL.—Financial statements of the Pat-
11 ent and Trademark Office shall be prepared on an annual
12 basis in accordance with generally accepted accounting
13 principles. Such statements shall be audited by an inde-
14 pendent certified public accountant chosen by the Com-
15 missioner. The audit shall be conducted in accordance with
16 standards that are consistent with generally accepted Gov-
17 ernment auditing standards and other standards estab-
18 lished by the Comptroller General, and with the generally
19 accepted auditing standards of the private sector, to the
20 extent feasible. The Commissioner shall transmit to the
21 Committees on the Judiciary of the House of Representa-
22 tives and the Senate the results of each audit under this
23 subsection.

24 “(b) REVIEW BY COMPTROLLER GENERAL.—The
25 Comptroller General may review any audit of the financial

1 statement of the Patent and Trademark Office that is con-
2 ducted under subsection (a). The Comptroller General
3 shall report to the Congress and the Office the results of
4 any such review and shall include in such report appro-
5 priate recommendations.

6 “(c) AUDIT BY COMPTROLLER GENERAL.—The
7 Comptroller General may audit the financial statements
8 of the Office and such audit shall be in lieu of the audit
9 required by subsection (a). The Office shall reimburse the
10 Comptroller General for the cost of any audit conducted
11 under this subsection.

12 “(d) ACCESS TO OFFICE RECORDS.—All books, fi-
13 nancial records, report files, memoranda, and other prop-
14 erty that the Comptroller General deems necessary for the
15 performance of any audit shall be made available to the
16 Comptroller General.

17 “(e) APPLICABILITY IN LIEU OF TITLE 31 PROVI-
18 SIONS.—This section applies to the Office in lieu of the
19 provisions of section 9105 of title 31.”.

20 **SEC. 2423. TRANSFERS.**

21 (a) TRANSFER OF FUNCTIONS.—Except as otherwise
22 provided in this Act, there are transferred to, and vested
23 in, the Patent and Trademark Office all functions, powers,
24 and duties vested by law in the Secretary of Commerce
25 or the Department of Commerce or in the officers or com-

ponents in the Department of Commerce with respect to the authority to grant patents and register trademarks, and in the Patent and Trademark Office, as in effect on the day before the effective date of this subtitle, and in the officers and components of such Office.

(b) TRANSFER OF FUNDS AND PROPERTY.—The Secretary of Commerce shall transfer to the Patent and Trademark Office, on the effective date of this subtitle, so much of the assets, liabilities, contracts, property, records, and unexpended and unobligated balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Department of Commerce, including funds set aside for accounts receivable which are related to functions, powers, and duties which are vested in the Patent and Trademark Office by this subtitle.

CHAPTER 2—EFFECTIVE DATE; TECHNICAL AMENDMENTS

SEC. 2431. EFFECTIVE DATE.

This subtitle shall take effect 6 months after the date of the enactment of this Act.

SEC. 2432. TECHNICAL AND CONFORMING AMENDMENTS.

(a) AMENDMENTS TO TITLE 35.—

1 (1) The table of contents for part I of title 35,
 2 United States Code, is amended by amending the
 3 item relating to chapter 1 to read as follows:

“1. Establishment, Officers and Employees, Functions 1.”

4 (2) The table of sections for chapter 1 of title
 5 35, United States Code, is amended to read as fol-
 6 lows:

7 **“CHAPTER 1—ESTABLISHMENT, OFFICERS**
 8 **AND EMPLOYEES, FUNCTIONS**

“Sec.

- “1. Establishment.
- “2. Powers and duties.
- “3. Officers and employees.
- “4. Restrictions on officers and employees as to interest in patents.
- “5. Patent and Trademark Office Management Advisory Board.
- “6. Duties of Commissioner.
- “7. Board of Patent Appeals and Interferences.
- “8. Suits by and against the Corporation.
- “9. Library.
- “10. Classification of patents.
- “11. Certified copies of records.
- “12. Publications.
- “13. Exchange of copies of patents with foreign countries.
- “14. Copies of patents for public libraries.
- “15. Annual report to Congress.”.

9 (3) The table of contents for chapter 4 of part
 10 I of title 35, United States Code, is amended by
 11 adding at the end the following new item:

“43. Audits.”.

12 (b) OTHER PROVISIONS OF LAW.—

13 (1) Section 9101(3) of title 31, United States
 14 Code, is amended by adding at the end the follow-
 15 ing:

1 “(O) the Patent and Trademark Office.”.

2 (2) Section 500(e) of title 5, United States
3 Code, is amended by striking “Patent Office” and
4 inserting “Patent and Trademark Office”.

5 (3) Section 5102(c)(23) of title 5, United
6 States Code, is amended by striking “, Department
7 of Commerce”.

8 (4) Section 5316 of title 5, United States Code,
9 is amended by striking “Commissioner of Patents,
10 Department of Commerce.”, “Deputy Commissioner
11 of Patents and Trademarks.”, “Assistant Commis-
12 sioner for Patents.”, and “Assistant Commissioner
13 for Trademarks.”.

14 (5) Section 12 of the Act of February 14, 1903
15 (15 U.S.C. 1511) is amended by striking “(d) Pat-
16 ent and Trademark Office;” and redesignating sub-
17 sections (a) through (g) as paragraphs (1) through
18 (6), respectively.

19 (6) The Act of April 12, 1892 (27 Stat. 395;
20 20 U.S.C. 91) is amended by striking “Patent Of-
21 fice” and inserting “Patent and Trademark Office”.

22 (7) Sections 505(m) and 512(o) of the Federal
23 Food, Drug, and Cosmetic Act (21 U.S.C. 355(m)
24 and 360b(o)) are each amended by striking “of the
25 Department of Commerce”.

1 (8) Section 105(e) of the Federal Alcohol Ad-
2 ministration Act (27 U.S.C. 205(e)) is amended by
3 striking “Patent Office” and inserting “Patent and
4 Trademark Office”.

5 (9) Section 1744 of title 28, United States
6 Code is amended—

7 (A) by striking “Patent Office” each place
8 it appears and inserting “Patent and Trade-
9 mark Office”; and

10 (B) by striking “Commissioner of Patents”
11 and inserting “Commissioner of Patents and
12 Trademarks”.

13 (10) Section 1745 of title 28, United States
14 Code, is amended by striking “United States Patent
15 Office” and inserting “Patent and Trademark Of-
16 fice”.

17 (11) Section 1928 of title 28, United States
18 Code, is amended by striking “Patent Office” and
19 inserting “Patent and Trademark Office”.

20 (12) Section 160 of the Atomic Energy Act of
21 1954 (42 U.S.C. 2190) is amended—

22 (A) by striking “United States Patent Of-
23 fice” and inserting “Patent and Trademark Of-
24 fice”; and

1 (B) by striking “Commissioner of Patents”
2 and inserting “Commissioner of Patents and
3 Trademarks”.

4 (13) Section 305(c) of the National Aeronautics
5 and Space Act of 1958 (42 U.S.C. 2457(c)) is
6 amended by striking “Commissioner of Patents” and
7 inserting “Commissioner of Patents and Trade-
8 marks”.

9 (14) Section 12(a) of the Solar Heating and
10 Cooling Demonstration Act of 1974 (42 U.S.C.
11 5510(a)) is amended by striking “Commissioner of
12 the Patent Office” and inserting “Commissioner of
13 Patents and Trademarks”.

14 (15) Section 1111 of title 44, United States
15 Code, is amended by striking “the Commissioner of
16 Patents,”.

17 (16) Section 1114 of title 44, United States
18 Code, is amended by striking “the Commissioner of
19 Patents,”.

20 (17) Section 1123 of title 44, United States
21 Code, is amended by striking “the Patent Office,”.

22 (18) Sections 1337 and 1338 of title 44, United
23 States Code, and the items relating to those sections
24 in the table of contents for chapter 13 of such title,
25 are repealed.

1 (19) Section 10(i) of the Trading With the
2 Enemy Act (50 U.S.C. App. 10(i)) is amended by
3 striking “Commissioner of Patents” and inserting
4 “Commissioner of Patents and Trademarks”.

5 (20) Section 8G(a)(2) of the Inspector General
6 Act of 1978 (5 U.S.C. App.) is amended by inserting
7 “the Patent and Trademark Office,” after “the
8 Panama Canal Commission,”.

9 **Subtitle E—Miscellaneous** 10 **Provisions**

11 **SEC. 2501. REFERENCES.**

12 Any reference in any other Federal law, Executive
13 order, rule, regulation, or delegation of authority, or any
14 document of or pertaining to a department or office from
15 which a function is transferred by this title—

16 (1) to the head of such department or office is
17 deemed to refer to the head of the department or of-
18 fice to which such function is transferred; or

19 (2) to such department or office is deemed to
20 refer to the department or office to which such func-
21 tion is transferred.

22 **SEC. 2502. EXERCISE OF AUTHORITIES.**

23 Except as otherwise provided by law, a Federal offi-
24 cial to whom a function is transferred by this title may,
25 for purposes of performing the function, exercise all au-

1 thorities under any other provision of law that were avail-
2 able with respect to the performance of that function to
3 the official responsible for the performance of the function
4 immediately before the effective date of the transfer of the
5 function under this title.

6 **SEC. 2503. SAVINGS PROVISIONS.**

7 (a) **LEGAL DOCUMENTS.**—All orders, determinations,
8 rules, regulations, permits, grants, loans, contracts, agree-
9 ments, certificates, licenses, and privileges—

10 (1) that have been issued, made, granted, or al-
11 lowed to become effective by the President, the Sec-
12 retary of Commerce, the United States Trade Rep-
13 resentative, any officer or employee of any office
14 transferred by this title, or any other Government
15 official, or by a court of competent jurisdiction, in
16 the performance of any function that is transferred
17 by this title, and

18 (2) that are in effect on the effective date of
19 such transfer (or become effective after such date
20 pursuant to their terms as in effect on such effective
21 date),

22 shall continue in effect according to their terms until
23 modified, terminated, superseded, set aside, or revoked in
24 accordance with law by the President, any other author-

1 ized official, a court of competent jurisdiction, or operation
2 of law.

3 (b) PROCEEDINGS.—This title shall not affect any
4 proceedings or any application for any benefits, service,
5 license, permit, certificate, or financial assistance pending
6 on the date of the enactment of this Act before an office
7 transferred by this title, but such proceedings and applica-
8 tions shall be continued. Orders shall be issued in such
9 proceedings, appeals shall be taken therefrom, and pay-
10 ments shall be made pursuant to such orders, as if this
11 Act had not been enacted, and orders issued in any such
12 proceeding shall continue in effect until modified, termi-
13 nated, superseded, or revoked by a duly authorized official,
14 by a court of competent jurisdiction, or by operation of
15 law. Nothing in this subsection shall be considered to pro-
16 hibit the discontinuance or modification of any such pro-
17 ceeding under the same terms and conditions and to the
18 same extent that such proceeding could have been discon-
19 tinued or modified if this title had not been enacted.

20 (c) SUITS.—This title shall not affect suits com-
21 menced before the date of the enactment of this Act, and
22 in all such suits, proceeding shall be had, appeals taken,
23 and judgments rendered in the same manner and with the
24 same effect as if this title had not been enacted.

1 (d) NONABATEMENT OF ACTIONS.—No suit, action,
2 or other proceeding commenced by or against the Depart-
3 ment of Commerce or the Secretary of Commerce, or by
4 or against any individual in the official capacity of such
5 individual as an officer or employee of an office trans-
6 ferred by this title, shall abate by reason of the enactment
7 of this title.

8 (e) CONTINUANCE OF SUITS.—If any Government of-
9 ficer in the official capacity of such officer is party to a
10 suit with respect to a function of the officer, and under
11 this title such function is transferred to any other officer
12 or office, then such suit shall be continued with the other
13 officer or the head of such other office, as applicable, sub-
14 stituted or added as a party.

15 (f) ADMINISTRATIVE PROCEDURE AND JUDICIAL RE-
16 VIEW.—Except as otherwise provided by this title, any
17 statutory requirements relating to notice, hearings, action
18 upon the record, or administrative or judicial review that
19 apply to any function transferred by this title shall apply
20 to the exercise of such function by the head of the Federal
21 agency, and other officers of the agency, to which such
22 function is transferred by this title.

23 **SEC. 2504. TRANSFER OF ASSETS.**

24 Except as otherwise provided in this title, so much
25 of the personnel, property, records, and unexpended bal-

1 ances of appropriations, allocations, and other funds em-
2 ployed, used, held, available, or to be made available in
3 connection with a function transferred to an official or
4 agency by this title shall be available to the official or the
5 head of that agency, respectively, at such time or times
6 as the Director of the Office of Management and Budget
7 directs for use in connection with the functions trans-
8 ferred.

9 **SEC. 2505. DELEGATION AND ASSIGNMENT.**

10 Except as otherwise expressly prohibited by law or
11 otherwise provided in this title, an official to whom func-
12 tions are transferred under this title (including the head
13 of any office to which functions are transferred under this
14 title) may delegate any of the functions so transferred to
15 such officers and employees of the office of the official as
16 the official may designate, and may authorize successive
17 redelegations of such functions as may be necessary or ap-
18 propriate. No delegation of functions under this section
19 or under any other provision of this title shall relieve the
20 official to whom a function is transferred under this title
21 of responsibility for the administration of the function.

1 **SEC. 2506. AUTHORITY OF DIRECTOR OF THE OFFICE OF**
2 **MANAGEMENT AND BUDGET WITH RESPECT**
3 **TO FUNCTIONS TRANSFERRED.**

4 (a) DETERMINATIONS.—If necessary, the Director
5 shall make any determination of the functions that are
6 transferred under this title.

7 (b) INCIDENTAL TRANSFERS.—The Director, at such
8 time or times as the Director shall provide, may make
9 such determinations as may be necessary with regard to
10 the functions transferred by this title, and to make such
11 additional incidental dispositions of personnel, assets, li-
12 abilities, grants, contracts, property, records, and unex-
13 pended balances of appropriations, authorizations, alloca-
14 tions, and other funds held, used, arising from, available
15 to, or to be made available in connection with such func-
16 tions, as may be necessary to carry out the provisions of
17 this title. The Director shall provide for the termination
18 of the affairs of all entities terminated by this title and
19 for such further measures and dispositions as may be nec-
20 essary to effectuate the purposes of this title.

21 **SEC. 2507. CERTAIN VESTING OF FUNCTIONS CONSIDERED**
22 **TRANSFERS.**

23 For purposes of this title, the vesting of a function
24 in a department or office pursuant to reestablishment of
25 an office shall be considered to be the transfer of the
26 function.

1 **SEC. 2508. AVAILABILITY OF EXISTING FUNDS.**

2 Existing appropriations and funds available for the
3 performance of functions, programs, and activities termi-
4 nated pursuant to this title shall remain available, for the
5 duration of their period of availability, for necessary ex-
6 penses in connection with the termination and resolution
7 of such functions, programs, and activities.

8 **SEC. 2509. DEFINITIONS.**

9 For purposes of this title—

10 (1) the term “function” includes any duty, obli-
11 gation, power, authority, responsibility, right, privi-
12 lege, activity, or program; and

13 (2) the term ‘office’ includes any office, admin-
14 istration, agency, bureau, institute, council, unit, or-
15 ganizational entity, or component thereof.

16 **Subtitle F—Citizens Commission**
17 **on 21st Century Government**

18 **SEC. 2601. SHORT TITLE AND PURPOSE.**

19 (a) SHORT TITLE.—This subtitle may be cited as the
20 “21st Century Government Act”.

21 (b) PURPOSE.—The purpose of this subtitle is to es-
22 tablish a bipartisan commission to—

23 (1) identify and analyze the current functions
24 and missions of the Federal Government; and

1 (2) based on that analysis, develop rec-
2 ommendations to restructure the executive branch of
3 the Federal Government, in order to—

4 (A) focus Federal efforts on those core
5 functions and missions that the Federal Gov-
6 ernment must perform in the 21st Century;

7 (B) ensure that the Federal Government
8 performs those functions as effectively and effi-
9 ciently as possible;

10 (C) consolidate executive organizations
11 around clear, specific missions reflecting cur-
12 rent national priorities;

13 (D) eliminate functions that do not ad-
14 vance current national priorities;

15 (E) eliminate duplication of functions and
16 activities within and among departments and
17 agencies;

18 (F) streamline organizational hierarchy so
19 as to reduce costs and increase accountability
20 for performance; and

21 (G) provide a basis for—

22 (i) the subsequent implementation of
23 operational reforms for Federal agencies,
24 including administrative consolidation and

1 the provision of 1-stop services for citizens;
2 and
3 (ii) more detailed structural improve-
4 ments within each agency.

5 **SEC. 2602. CITIZENS COMMISSION ON 21ST CENTURY GOV-**
6 **ERNMENT.**

7 (a) ESTABLISHMENT.—There is established in the
8 legislative branch an independent commission to be known
9 as the Citizens Commission on 21st Century Government
10 (in this subtitle referred to as the “Commission”).

11 (b) APPOINTMENT OF COMMISSIONERS.—

12 (1) COMPOSITION.—The Commission shall be a
13 bipartisan body composed of 11 members, who shall
14 be appointed as follows:

15 (A) Three members shall be appointed by
16 the Speaker of the House of Representatives.

17 (B) Three members shall be appointed by
18 the majority leader of the Senate.

19 (C) Two members shall be appointed by
20 the minority leader of the House of Representa-
21 tives.

22 (D) Two members shall be appointed by
23 the minority leader of the Senate.

24 (E) One member appointed jointly by the
25 Speaker of the House of Representatives and

1 the majority leader of the Senate, in consulta-
2 tion with the minority leaders of the House of
3 Representatives and the Senate, who shall be
4 the Chairman of the Commission.

5 (2) MEMBERSHIP QUALIFICATIONS.—Any citi-
6 zen of the United States is eligible to be appointed
7 as a member of the Commission, except an individ-
8 ual serving as a Member of Congress or an elected
9 or appointed official of the executive branch of the
10 Federal Government.

11 (3) CONFLICT OF INTERESTS.—For purposes of
12 chapter 11 of title 18, United States Code, a mem-
13 ber of the Commission shall be a special Government
14 employee.

15 (4) DATE OF APPOINTMENTS.—All members of
16 the Commission shall be appointed no later than 30
17 days after the date of the enactment of this Act.

18 (c) TERMS.—Each member of the Commission shall
19 serve until the termination of the Commission.

20 (d) VACANCIES.—A vacancy on the Commission shall
21 be filled in the same manner as was the original appoint-
22 ment.

23 (e) MEETINGS.—The Commission shall meet as nec-
24 essary to carry out its responsibilities.

1 (f) TRAVEL EXPENSES.—Members of the Commis-
2 sion shall receive travel expenses, including per diem in
3 lieu of subsistence, in accordance with sections 5702 and
4 5703 of title 5, United States Code.

5 (g) DIRECTOR.—

6 (1) APPOINTMENT.—The Chairman, in con-
7 sultation with the other members of the Commission,
8 shall appoint a Director of the Commission.

9 (2) PAY.—The Director shall be paid at the
10 rate of basic pay payable for level IV of the Execu-
11 tive Schedule under section 5315 of title 5, United
12 States Code.

13 (h) STAFF.—

14 (1) APPOINTMENT.—The Director may, with
15 the approval of the Chairman, appoint and fix the
16 pay of employees of the Commission without regard
17 to the provisions of title 5, United States Code, gov-
18 erning appointment in the competitive service, and
19 any Commission employee may be paid without re-
20 gard to the provisions of chapter 51 and subchapter
21 III of chapter 53 of that title relating to classifica-
22 tion and General Schedule pay rates, except that a
23 Commission employee may not receive pay in excess
24 of the annual rate of basic pay payable for level V

1 of the Executive Schedule under section 5316 of title
2 5, United States Code.

3 (2) DETAIL.—(A) Upon request of the Direc-
4 tor, the head of any Federal department or agency
5 may detail any of the personnel of the department
6 or agency to the Commission to assist the Commis-
7 sion in carrying out its duties under this subtitle.
8 Such details may be made with or without reim-
9 bursement, and shall be without interruption or loss
10 of civil service status or privilege.

11 (B) Upon request of the Director, a Member of
12 Congress or an officer who is the head of an office
13 or committee of the Senate or House of Representa-
14 tives or of an agency within the legislative branch
15 may detail an employee of the office or committee of
16 which such Member or officer is the head to the
17 Commission to assist the Commission in carrying
18 out its duties under this subtitle.

19 (i) SUPPORT SERVICES.—The Comptroller General of
20 the United States shall provide support services to the
21 Commission in accordance with an agreement entered into
22 with the Commission.

23 (j) OTHER AUTHORITIES.—The Commission may
24 procure by contract, to the extent funds are available, the
25 temporary or intermittent services of experts or consult-

1 ants pursuant to section 3109 of title 5, United States
2 Code. The Commission shall give public notice of any such
3 contract before entering into such contract.

4 (k) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated to the Commission
6 \$1,250,000 for fiscal year 1996 to carry out its respon-
7 sibilities under this subtitle, to remain available until De-
8 cember 31, 1996.

9 (l) TERMINATION.—The Commission shall terminate
10 December 31, 1996.

11 **SEC. 2603. DEPARTMENT AND AGENCY COOPERATION.**

12 All Federal agencies and employees of all Federal
13 agencies shall cooperate fully with all requests for infor-
14 mation from the Commission and shall respond to any
15 such request for information within 30 days or such other
16 time as is agreed upon by the requesting and requested
17 persons.

18 **SEC. 2604. HEARINGS.**

19 The Commission shall hold such hearings as it con-
20 siders appropriate. The Chairman of the Commission shall
21 designate a member of the Commission to preside at any
22 hearing in the absence of the Chairman.

1 **SEC. 2605. COMMISSION PROCEDURES.**

2 (a) **STARTUP.**—The Commission may conduct busi-
3 ness at any time after at least 6 of its members have been
4 appointed in accordance with section 2602.

5 (b) **VOTING.**—A majority of those members of the
6 Commission who have been appointed in accordance with
7 section 2602 shall constitute a quorum for purposes of
8 conducting Commission business. Any recommendation of
9 the Commission shall require an affirmative vote of a ma-
10 jority of Commission members who have been appointed
11 in accordance with section 2602. Members of the Commis-
12 sion may not vote by proxy.

13 **SEC. 2606. FRAMEWORK FOR THE FEDERAL GOVERNMENT**
14 **IN THE 21ST CENTURY.**

15 (a) **ANALYSIS OF CURRENT FEDERAL FUNCTIONS.**—
16 The Commission shall conduct a comprehensive review of
17 the functions currently performed by the Federal Govern-
18 ment, and shall analyze each such function under the fol-
19 lowing criteria:

20 (1) Does the function have clearly defined mis-
21 sions and objectives.

22 (2) Do those missions and objectives serve a
23 currently valid and important Federal role, including
24 analysis of whether—

25 (A) there is a need for governmental ac-
26 tion;

1 (B) the Federal Government has exclusive
2 constitutional authority to perform the function;

3 (C) the Federal Government is otherwise
4 uniquely positioned to perform the function;
5 and

6 (D) there is a clear need for or advantage
7 to performing the function at the Federal level
8 versus at the State or local level.

9 (3) Does the current Federal role constitute the
10 most effective and efficient means of achieving the
11 objectives of the function.

12 (4) Does the current Federal role constitute the
13 least intrusive means of achieving the objectives with
14 respect to individual liberty and principles of Fed-
15 eralism.

16 (5) Is there a need to enhance Federal perform-
17 ance of the function, including analysis of whether—

18 (A) the Federal Government requires
19 greater resources or authority to perform that
20 function;

21 (B) there are other ways of consolidating
22 Federal resources and activities directed to the
23 function; and

1 (C) there are opportunities for participa-
2 tion by the private sector or other levels of gov-
3 ernment.

4 (b) COMMISSION REPORTS AND RECOMMENDA-
5 TIONS.—

6 (1) IN GENERAL.—The Commission shall pre-
7 pare and submit to the Congress a report or reports
8 on the results of its analysis. Each report shall be
9 made public and shall include—

10 (A) the Commission's findings and conclu-
11 sions;

12 (B) the Commission's recommendations for
13 the restructuring or termination of current
14 functions;

15 (C) the reasons for such findings, conclu-
16 sions, and recommendations; and

17 (D) a complete description of the Commis-
18 sion's deliberations, including a discussion of
19 any major points on which the members had
20 significant disagreements.

21 (2) REPORT ON MATTERS OF HIGHEST PRIOR-
22 ITY.—Not later than July 31, 1996, the Commission
23 shall submit a report containing those findings, con-
24 clusions, and recommendations that the Commission
25 considers to be of highest priority.

1 (3) ADDITIONAL REPORTS.—The Commission
2 may submit such additional reports under this sec-
3 tion as it considers appropriate, and at such times
4 on or before December 31, 1996, as it considers ap-
5 propriate.

6 **SEC. 2607. PROPOSAL FOR REORGANIZING THE EXECUTIVE**
7 **BRANCH.**

8 (a) IN GENERAL.—The Commission shall—

9 (1) examine all significant issues related to the
10 organization of the executive branch of the Federal
11 Government; and

12 (2) develop organizational recommendations to
13 eliminate duplication, reduce costs, streamline oper-
14 ations, and improve performance and accountability
15 in Federal departments and agencies.

16 (b) LEGISLATIVE PROPOSAL.—The recommendations
17 of the Commission under this section shall be encompassed
18 in a single legislative proposal under section 2608 which
19 implements a comprehensive reorganization and restruc-
20 turing plan for the executive branch and which addresses,
21 among other issues, the following:

22 (1) Whether the Federal Government should in-
23 clude fewer departments, each with clear, specific
24 missions and goals, and if so, what those depart-
25 ments should be.

1 (2) Whether and how to ensure that similar
2 functions of Government, such as statistical, science,
3 or trade functions, are consolidated within a single
4 department or agency.

5 (3) Whether and how significant common ad-
6 ministrative functions should be consolidated within
7 one executive organization.

8 (4) Whether a single department-level office
9 should be designated with responsibility for rep-
10 resentation and oversight within the White House of
11 all independent agencies of the executive branch.

12 (5) Whether and how a streamlined hierarchical
13 structure can be provided within each department
14 and agency.

15 (c) OTHER RECOMMENDATIONS.—The Commission
16 may also make additional recommendations which it deter-
17 mines will enhance the operational effectiveness of the or-
18 ganizational recommendations. Such recommendations
19 shall not be included in any draft implementation bill to
20 be considered under section 2609, but may be submitted
21 separately to the Congress.

22 **SEC. 2608. PROCEDURES FOR MAKING RECOMMENDA-**
23 **TIONS.**

24 (a) COMMISSION REPORT.—No later than December
25 31, 1996, the Commission shall prepare and submit to the

1 Congress a single report, which shall be made public, and
2 which shall include—

3 (1) a description of the Commission’s findings
4 and recommendations pursuant to section 2607;

5 (2) the reasons for such recommendations; and

6 (3) a single proposal consisting of draft legisla-
7 tion to implement those recommendations for which
8 legislation is appropriate.

9 (b) REVIEW AND COMMENT BY THE PRESIDENT.—

10 No later than March 31, 1997, the President shall submit
11 to the Congress an evaluation of the Commission’s report
12 under this section, together with any recommendations
13 that the President considers appropriate.

14 **SEC. 2609. CONGRESSIONAL CONSIDERATION OF REFORM**
15 **PROPOSALS.**

16 (a) DEFINITIONS.—For purposes of this section—

17 (1) the term “implementation bill” means only
18 a bill which is introduced as provided under sub-
19 section (b), and consists of the draft legislation con-
20 tained in the report submitted to Congress under
21 section 2608; and

22 (2) the term “calendar day of session” means
23 a calendar day other than one on which either
24 House is not in session because of an adjournment
25 of more than 3 days to a date certain.

1 (b) INTRODUCTION, REFERRAL, AND REPORT OR
2 DISCHARGE.—

3 (1) INTRODUCTION.—On the first calendar day
4 of session on which both Houses are in session im-
5 mediately following April 15, 1997, a bill consisting
6 of the draft legislation contained in the report sub-
7 mitted to Congress under section 2608 shall be in-
8 troduced (by request)—

9 (A) in the Senate by the majority leader or
10 by any Member designated by the majority
11 leader; and

12 (B) in the House of Representatives by the
13 majority leader or by any Member designated
14 by the majority.

15 If such a bill is not introduced in either House as
16 provided in the preceding session within 3 calendar
17 days of session after such first calendar day of ses-
18 sion, then any Member of that House may introduce
19 such a bill.

20 (2) REFERRAL.—The implementation bill intro-
21 duced in the Senate under paragraph (1) shall be re-
22 ferred concurrently to the Committee on Govern-
23 mental Affairs of the Senate and other committees
24 with jurisdiction.

1 (3) REPORT OR DISCHARGE.—If any committee
2 to which an implementation bill is referred has not
3 reported such bill by the end of the 15th calendar
4 day of session after the date of introduction of such
5 bill, such committee shall be immediately discharged
6 from further consideration of such bill, and upon
7 being reported or discharged from all committees,
8 such bill shall be placed on the appropriate calendar
9 of the House involved.

10 (c) PROCEDURES FOR CONSIDERATION BY THE SEN-
11 ATE.—

12 (1) IN GENERAL.—On or after the second cal-
13 endar day of session after the date on which an im-
14 plementation bill is placed on the Senate calendar,
15 it is in order (even though a previous motion to the
16 same effect has been disagreed to) for any Senator
17 to move to proceed to the consideration of the imple-
18 mentation bill (but only on the day after the cal-
19 endar day of session on which such Senator an-
20 nounces on the floor of the Senate the Senator's in-
21 tention to do so). All points of order against the im-
22 plementation bill (and against consideration of the
23 implementation bill) are waived. The motion is privi-
24 leged and is not debatable. The motion is not subject
25 to amendment, or to a motion to postpone, or to a

1 motion to proceed to the consideration of other busi-
2 ness. A motion to reconsider the vote by which the
3 motion is agreed to or disagreed to shall not be in
4 order. If a motion to proceed to the consideration of
5 the implementation bill is agreed to, the Senate shall
6 immediately proceed to consideration of the imple-
7 mentation bill without intervening motion, order, or
8 other business, and the implementation bill shall re-
9 main the unfinished business of the Senate until dis-
10 posed of.

11 (2) DEBATE.—Debate on the implementation
12 bill, and on all debatable motions and appeals in
13 connection therewith, shall be limited to not more
14 than 10 hours, which shall be divided equally be-
15 tween the majority leader and the minority leader or
16 their designees. An amendment to the implementa-
17 tion bill is not in order. A motion further to limit
18 debate is in order and not debatable. A motion to
19 postpone, or a motion to proceed to the consider-
20 ation of other business, or a motion to recommit the
21 implementation bill is not in order. A motion to re-
22 consider the vote by which the implementation bill is
23 agreed to or disagreed to is not in order.

24 (3) MOTION TO SUSPEND OR WAIVE APPLICA-
25 TION.—No motion to suspend or waive the applica-

1 tion of this subsection shall be in order, except by
2 unanimous consent.

3 (4) APPEALS FROM CHAIR.—Appeals from the
4 decisions of the Chair relating to the application of
5 the rules of the Senate to the procedure relating to
6 an implementation bill shall be decided without de-
7 bate.

8 (5) FINAL PASSAGE.—Immediately following
9 the conclusion of the debate on an implementation
10 bill and a single quorum call at the conclusion of the
11 debate if requested in accordance with the rules of
12 the Senate, the vote on final passage of the imple-
13 mentation bill shall occur.

14 (d) CONSIDERATION BY OTHER HOUSE.—

15 (1) IN GENERAL.—If, before the passage by the
16 Senate of an implementation bill, the Senate receives
17 from the House of Representatives an implementa-
18 tion bill, then the following procedures shall apply:

19 (A) The implementation bill of the House
20 of Representatives shall not be referred to a
21 committee and may not be considered in the
22 Senate except in the case of final passage as
23 provided in subparagraph (B)(ii).

24 (B) With respect to an implementation bill
25 of the Senate—

1 (i) the procedure in the Senate shall
2 be the same as if no implementation bill
3 had been received from the House of Rep-
4 resentatives; but

5 (ii) the vote on final passage shall be
6 on the implementation bill of the House of
7 Representatives.

8 (2) FINAL DISPOSITION.—Upon disposition of
9 the implementation bill received from the House of
10 Representatives, it shall no longer be in order to
11 consider the implementation bill that originated in
12 the Senate.

13 (f) RULES OF THE SENATE AND HOUSE.—This sec-
14 tion is enacted by Congress—

15 (1) as an exercise of the rulemaking power of
16 the Senate and House of Representatives, respec-
17 tively, and as such it is deemed a part of the rules
18 of each House, respectively, but applicable only with
19 respect to the procedure to be followed in that
20 House in the case of an implementation bill, and it
21 supersedes other rules only to the extent that it is
22 inconsistent with such rules; and

23 (2) with full recognition of the constitutional
24 right of either House to change its rules (so far as
25 relating to the procedure of that House) at any time,

1 in the same manner, and to the same extent as in
2 the case of any other rule of that House.

3 **SEC. 2610. DISTRIBUTION OF ASSETS.**

4 Any proceeds from the sale of assets of any depart-
5 ment or agency resulting from the enactment of an imple-
6 mentation bill under section 2609 shall be—

- 7 (1) applied to reduce the Federal deficit; and
8 (2) deposited in the Treasury and treated as
9 general receipts.

10 **SEC. 2611. AGENCY DEFINED.**

11 For purposes of this subtitle, the term “agency”
12 means each authority of the Federal Government, includ-
13 ing all departments, independent agencies, government-
14 sponsored enterprises, and Government corporations, ex-
15 cept the legislative branch, judicial branch, the govern-
16 ments of the territories or possessions of the United
17 States, or the District of Columbia.

TITLE III—REGULATORY REFORM

3 SEC. 3001. SHORT TITLE.

4 This title may be cited as the “Comprehensive Regu-
5 latory Reform Act of 1995”.

6 SEC. 3002. ANALYSIS OF AGENCY RULES.

7 (a) IN GENERAL.—(1) Section 551 of title 5, United
8 States Code, is amended by striking “and” at the end of
9 paragraph (13), by striking the period at the end of para-
10 graph (14) and inserting a semicolon, and by adding at
11 the end the following:

12 “(15) ‘major rule’ means any rule subject to
13 section 553(c) that is likely to result in—

14 “(A) an annual effect on the economy of
15 \$100,000,000 or more;

16 “(B) a major increase in costs or prices for
17 consumers, individual industries, Federal,
18 State, or local government agencies, or geo-
19 graphic regions, or

20 “(C) significant adverse effects on competi-
21 tion, employment, investment, productivity, in-

1 novation, or on the ability of United States-based
2 enterprises to compete with foreign-based enterprises
3 in domestic and export markets;

4 “(16) ‘Director’ means the Director of the Of-
5 fice of Management and Budget;

6 “(17) ‘cost’ means the reasonably identifiable
7 significant adverse effects, quantifiable and
8 nonquantifiable, including social, environmental,
9 health, and economic effects that are expected to re-
10 sult directly or indirectly from implementation of a
11 rule or other agency action;

12 “(18) ‘cost-benefit analysis’ means an evalua-
13 tion of the costs and benefits of a rule, quantified
14 to the extent feasible and appropriate and otherwise
15 qualitatively described, that is prepared in accord-
16 ance with the requirements of this subchapter at the
17 level of detail appropriate and practicable for rea-
18 soned decision making on the matter involved, tak-
19 ing into consideration the significance and complex-
20 ity of the decision and any need for expedition; and

21 “(19) ‘reasonable alternatives’ means the range
22 of reasonable regulatory options that the agency has
23 authority to consider under the statute granting
24 rulemaking authority, including flexible regulatory

1 options, unless precluded by the statute granting the
2 rulemaking authority.”.

3 (2) Section 553 of title 5, United States Code, is
4 amended by adding at the end the following:

5 “(f)(1) Each agency shall for a proposed major rule
6 publish in the Federal Register, at least 90 days before
7 the date of publication of the general notice required
8 under subsection (b), a notice of intent to engage in rule-
9 making.

10 “(2) A notice under paragraph (1) for a proposed
11 major rule shall include, to the extent possible, the infor-
12 mation required to be included in a regulatory impact
13 analysis for the rule under subsection (i)(4)(B) and (D).

14 “(3) For a major rule proposed by an agency, the
15 head of the agency shall include in a general notice under
16 subsection (b), a preliminary regulatory impact analysis
17 for the rule prepared in accordance with subsection (i).

18 “(4) For a final major rule, the agency shall include
19 with the statement of basis and purpose—

20 “(A) a summary of a final regulatory impact
21 analysis of the rule in accordance with subsection
22 (i); and

23 “(B) a clear delineation of all changes in the in-
24 formation included in the final regulatory impact
25 analysis under subsection (i) from any such informa-

1 tion that was included in the notice for the rule
2 under subsection (b).

3 The agency shall provide the complete text of a final regu-
4 latory impact analysis upon request.

5 “(5) The issuance of a notice of intent to engage in
6 rulemaking under paragraph (1) and the issuance of a
7 preliminary regulatory impact analysis under paragraph
8 (3) shall not be considered final agency action for pur-
9 poses of section 704.

10 “(6) In a rulemaking involving a major rule, the
11 agency conducting the rulemaking shall make a written
12 record describing the subject of all contacts the agency
13 made with persons outside the agency relating to such
14 rulemaking. If the contact was made with a non-govern-
15 mental person, the written record of such contact shall be
16 made available, upon request to the public.”.

17 (3)(A) HEARING REQUIREMENT.—Section 553 of
18 title 5, United States Code, is further amended by adding
19 after subsection (f) the following:

20 “(g) If more than 100 interested persons acting indi-
21 vidually submit requests for a hearing to an agency re-
22 garding any major rule proposed by the agency, the agen-
23 cy shall hold such a hearing on the proposed rule.”.

1 (B) EXTENSION OF COMMENT PERIOD.—Section
2 553 of title 5, United States Code is further amended by
3 adding after subsection (g) the following:

4 “(h) If during the 90-day period beginning on the
5 date of publication of a notice under subsection (f) for a
6 proposed major rule, or if during the period beginning on
7 the date of publication or service of notice required by sub-
8 section (b) for a proposed major rule, more than 100 per-
9 sons individually contact the agency to request an exten-
10 sion of the period for making submissions under sub-
11 section (c) pursuant to the notice, the agency—

12 “(1) shall provide an additional 30-day period
13 for making those submissions; and

14 “(2) may not adopt the rule until after the ad-
15 ditional period.”.

16 (C) RESPONSE TO COMMENTS.—Section 553(c) of
17 title 5, United States Code, is amended—

18 (i) by inserting “(1)” after “(c)”; and

19 (ii) by adding at the end the following:

20 “(2) Each agency shall publish in the Federal Reg-
21 ister, with each rule published under section 552(a)(1)(D),
22 responses to the substance of the comments received by
23 the agency regarding the rule.”.

24 (4) Section 553 of title 5, United States Code, is fur-
25 ther amended by adding after subsection (h) the following:

1 “(i)(1) Each agency shall, in connection with every
2 major rule, prepare, and, to the extent permitted by law,
3 consider, a regulatory impact analysis. Such analysis may
4 be combined with any regulatory flexibility analysis per-
5 formed under sections 603 and 604.

6 “(2) Each agency shall initially determine whether a
7 rule it intends to propose or issue is a major rule. The
8 Director shall have authority to order a rule to be treated
9 as a major rule and to require any set of related rules
10 to be considered together as a major rule.

11 “(3) Except as provided in subsection (j), agencies
12 shall prepare—

13 “(A) a preliminary regulatory impact analysis,
14 which shall be transmitted, along with a notice of
15 proposed rulemaking, to the Director at least 60
16 days prior to the publication of notice of proposed
17 rulemaking, and

18 “(B) a final regulatory impact analysis, which
19 shall be transmitted along with the final rule at least
20 30 days prior to the publication of a major rule.

21 “(4) Each preliminary and final regulatory impact
22 analysis shall contain the following information:

23 “(A) A description of the potential benefits of
24 the rule, including any beneficial effects that cannot

1 be quantified in monetary terms and the identifica-
2 tion of those likely to receive the benefits.

3 “(B) An explanation of the necessity, legal au-
4 thority, and reasonableness of the rule and a de-
5 scription of the condition that the rule is to address.

6 “(C) A description of the potential costs of the
7 rule, including any adverse effects that cannot be
8 quantified in monetary terms, and the identification
9 of those likely to bear the costs.

10 “(D) An analysis of alternative approaches, in-
11 cluding market based mechanisms or other flexible
12 regulatory options that could substantially achieve
13 the same regulatory goal at a lower cost and an ex-
14 planation of the reasons why such alternative ap-
15 proaches were not adopted, together with a dem-
16 onstration that the rule provides for the least costly
17 approach.

18 “(E) A statement that the rule does not conflict
19 with, or duplicate, any other rule or a statement of
20 the reasons why such a conflict or duplication exists.

21 “(F) A statement of whether the rule will re-
22 quire on-site inspections or whether persons will be
23 required by the rule to maintain any records which
24 will be subject to inspection, and a statement of
25 whether the rule will require persons to obtain li-

1 censes, permits, or other certifications, including
2 specification of any associated fees or fines.

3 “(G) An estimate of the costs to the agency for
4 implementation and enforcement of the rule and of
5 whether the agency can be reasonably expected to
6 implement the rule with the current level of appro-
7 priations.

8 “(5)(A) the Director is authorized to review and pre-
9 pare comments on any preliminary or final regulatory im-
10 pact analysis, notice of proposed rulemaking, or final rule
11 based on the requirements of this subsection.

12 “(B) Upon the request of the Director, an agency
13 shall consult with the Director concerning the review of
14 a preliminary impact analysis or notice of proposed rule-
15 making and shall refrain from publishing its preliminary
16 regulatory impact analysis or notice of proposed rule-
17 making until such review is concluded. The Director’s re-
18 view may not take longer than 90 days after the date of
19 the request of the Director.

20 “(6)(A) An agency may not adopt a major rule unless
21 the final regulatory impact analysis for the rule is ap-
22 proved or commented upon in writing by the Director or
23 by an individual designated by the Director for that pur-
24 pose.

1 “(B) Upon receiving notice that the Director intends
2 to comment in writing with respect to any final regulatory
3 impact analysis or final rule, the agency shall refrain from
4 publishing its final regulatory impact analysis or final rule
5 until the agency has responded to the Director’s comments
6 and incorporated those comments in the agency’s response
7 in the rulemaking file.

8 “(7)(A) Except as provided in subparagraph (B), no
9 final major rule subject to this section shall be promul-
10 gated unless the agency head publishes in the Federal
11 Register a finding that—

12 ”(i) the benefits of the rule justify the costs of
13 the rule; and

14 “(ii) the rule employs to the extent practicable
15 flexible alternatives as set forth in paragraph (4)(D)
16 and adopts the reasonable alternative which has the
17 greater net benefits and achieves the objectives of
18 the statute.

19 “(B) If, applying the statutory requirements upon
20 which the rule is based, a rule cannot satisfy the criteria
21 of subparagraph (A), the agency head may promulgate the
22 rule if the agency head finds that—

23 “(i) the rule employs to the extent practicable
24 flexible reasonable alternatives of the type described
25 in paragraph (4)(D); and

1 “(ii) the rule adopts the alternative with the
2 least net cost of the reasonable alternatives that
3 achieve the objectives of the statute.

4 “(8) Notwithstanding section 551(16), for purposes
5 of this subsection with regard to any rule proposed or is-
6 sued by an appropriate Federal banking agency (as that
7 term is defined in section 3(q) of the Federal Deposit In-
8 surance Act (12 U.S.C. 1813(q)), the National Credit
9 Union Administration, or the Office of Federal Housing
10 Enterprise Oversight, the term ‘Director’ means the head
11 of such agency, Administration, or Office.”.

12 (5) Section 553 of title 5, United States Code, is fur-
13 ther amended by adding after subsection (i) the following:

14 “(j) To the extent practicable, the head of an agency
15 shall seek to ensure that any proposed major rule or regu-
16 latory impact analysis of such a rule is written in a reason-
17 ably simple and understandable manner and provides ade-
18 quate notice of the content of the rule to affected per-
19 sons.”.

20 (6) Section 553 of title 5, United States Code, is fur-
21 ther amended by adding after subsection (j) the following:

22 “(k)(1) The provisions of this section regarding
23 major rules shall not apply if—

24 “(A) the agency for good cause finds that con-
25 ducting cost-benefit analysis is impracticable due to

1 an emergency, or health or safety threat, or a food
2 safety threat that is likely to result in significant
3 harm to the public or natural resources; and

4 “(B) the agency publishes in the Federal Reg-
5 ister, together with such finding, a succinct state-
6 ment of the basis for the finding.

7 “(2) Not later than one year after the promulgation
8 of a final major rule to which paragraph (1) applies, the
9 agency shall comply with the provisions of this subchapter
10 and, as thereafter necessary, revise the rule.

11 (7) Section 553 of title 5, United States Code, is fur-
12 ther amended by adding after subsection (k) the following:

13 “(l) The provisions of this section regarding major
14 rules shall not apply to—

15 “(1) any regulation proposed or issued in con-
16 nection with the implementation of monetary policy
17 or to ensure the safety and soundness of federally
18 insured depository institutions, any affiliate of such
19 institution, credit unions, or government sponsored
20 housing enterprises regulated by the Office of Fed-
21 eral Housing Enterprise Oversight;

22 “(2) any agency action that the head of the
23 agency certifies is limited to interpreting, implement-
24 ing, or administering the internal revenue laws of
25 the United States, including any regulation proposed

1 or issued in connection with ensuring the collection
2 of taxes from a subsidiary of a foreign company
3 doing business in the United States; and

4 “(3) any regulation proposed or issued pursu-
5 ant to section 553 of title 5, United States Code, in
6 connection with imposing trade sanctions against
7 any country that engages in illegal trade activities
8 against the United States that are injurious to
9 American technology, jobs, pensions, or general eco-
10 nomic well-being.”.

11 (8) The Director of the Office of Management and
12 Budget shall submit a report to the Congress no later than
13 24 months after the date of the enactment of this Act con-
14 taining an analysis of rulemaking procedures of Federal
15 agencies and an analysis of the impact of those rule-
16 making procedures on the regulated public and regulatory
17 process.

18 (9) The amendments made by this subsection shall
19 apply only to final agency rules issued after rulemaking
20 begun after the date of enactment of this Act.

21 **SEC. 3003. RISK ASSESSMENT.**

22 (a) IN GENERAL.—Chapter 6 of title 5, United
23 States Code, is amended by adding at the end the follow-
24 ing:

1 “SUBCHAPTER III—RISK ASSESSMENTS

2 **“§ 631. Short title**

3 “‘This subchapter may be cited as the ‘Risk Assess-
4 ment and Communication Act of 1995’.

5 **“§ 632. Purposes**

6 “‘The purposes of this subchapter are—

7 “(1) to present the public and executive branch
8 with the most scientifically objective and unbiased
9 information concerning the nature and magnitude of
10 health, safety, and environmental risks in order to
11 provide for sound regulatory decisions and public
12 education;

13 “(2) to provide for full consideration and dis-
14 cussion of relevant data and potential methodologies;

15 “(3) to require explanation of significant
16 choices in the risk assessment process which will
17 allow for better peer review and public understand-
18 ing; and

19 “(4) to improve consistency within the executive
20 branch in preparing risk assessments and risk char-
21 acterizations.

22 **“§ 633. Effective date; applicability; savings provi-**
23 **sions**

24 “(a) EFFECTIVE DATE.—Except as otherwise specifi-
25 cally provided in this subchapter, the provisions of this

1 subchapter shall take effect 18 months after the date of
2 enactment of this subchapter.

3 “(b) APPLICABILITY.—

4 “(1) IN GENERAL.—Except as provided in para-
5 graph (3), this subchapter applies to all significant
6 risk assessment documents and significant risk char-
7 acterization documents, as defined in paragraph (2).

8 “(2) SIGNIFICANT RISK ASSESSMENT DOCU-
9 MENT OR SIGNIFICANT RISK CHARACTERIZATION
10 DOCUMENT.—(A) As used in this subchapter, the
11 terms ‘significant risk assessment document’ and
12 ‘significant risk characterization document’ include,
13 at a minimum, risk assessment documents or risk
14 characterization documents prepared by or on behalf
15 of a covered Federal agency in the implementation
16 of a regulatory program designed to protect human
17 health, safety, or the environment, used as a basis
18 for one of the items referred to in subparagraph (B),
19 and—

20 “(i) included by the agency in that item; or

21 “(ii) inserted by the agency in the adminis-
22 trative record for that item.

23 “(B) The items referred to in subparagraph (A)
24 are the following:

1 “(i) Any proposed or final major rule, in-
2 cluding any analysis or certification under sub-
3 chapter II, promulgated as part of any Federal
4 regulatory program designed to protect human
5 health, safety, or the environment.

6 “(ii) Any proposed or final environmental
7 clean-up plan for a facility or Federal guidelines
8 for the issuance of any such plan. As used in
9 this clause, the term ‘environmental clean-up’
10 means a corrective action under the Solid
11 Waste Disposal Act, a removal or remedial ac-
12 tion under the Comprehensive Environmental
13 Response, Compensation, and Liability Act of
14 1980, and any other environmental restoration
15 and waste management carried out by or on be-
16 half of a covered Federal agency with respect to
17 any substance other than municipal waste.

18 “(iii) Any proposed or final permit condi-
19 tion placing a restriction on facility siting or
20 operation under Federal laws administered by
21 the Environmental Protection Agency or the
22 Department of the Interior. Nothing in this sec-
23 tion (iii) shall apply to the requirements of sec-
24 tion 404 of the Clean Water Act.

25 “(iv) Any report to Congress.

1 “(v) Any regulatory action to place a sub-
2 stance on any official list of carcinogens or
3 toxic or hazardous substances or to place a new
4 health effects value on such list, including the
5 Integrated Risk Information System Database
6 maintained by the Environmental Protection
7 Agency.

8 “(vi) Any guidance, including protocols of
9 general applicability, establishing policy regard-
10 ing risk assessment or risk characterization.

11 “(C) The terms ‘significant risk assessment
12 document’ and ‘significant risk characterization doc-
13 ument’ shall also include the following:

14 “(i) Any such risk assessment and risk
15 characterization documents provided by a cov-
16 ered Federal agency to the public and which are
17 likely to result in an annual effect on the econ-
18 omy of \$75,000,000 or more.

19 “(ii) Environmental restoration and waste
20 management carried out by or on behalf of the
21 Department of Defense with respect to any sub-
22 stance other than municipal waste.

23 “(D) Within 15 months after the date of the
24 enactment of this subchapter, each covered Federal
25 agency administering a regulatory program designed

1 to protect human health, safety, or the environment
2 shall promulgate a rule establishing those additional
3 categories, if any, of risk assessment and risk char-
4 acterization documents prepared by or on behalf of
5 the covered Federal agency that the agency will con-
6 sider significant risk assessment documents or sig-
7 nificant risk characterization documents for pur-
8 poses of this subchapter. In establishing such cat-
9 egories, the head of the agency shall consider each
10 of the following:

11 “(i) The benefits of consistent compliance
12 by documents of the covered Federal agency in
13 the categories.

14 “(ii) The administrative burdens of includ-
15 ing documents in the categories.

16 “(iii) The need to make expeditious admin-
17 istrative decisions regarding documents in the
18 categories.

19 “(iv) The possible use of a risk assessment
20 or risk characterization in any compilation of
21 risk hazards or health or environmental effects
22 prepared by an agency and commonly made
23 available to, or used by, any Federal, State, or
24 local government agency.

1 “(v) Such other factors as may be appro-
2 priate.

3 “(E)(i) Not later than 18 months after the date
4 of the enactment of this subchapter, the President,
5 acting through the Director of the Office of Manage-
6 ment and Budget, shall determine whether any other
7 Federal agencies should be considered covered Fed-
8 eral agencies for purposes of this subchapter. Such
9 determination, with respect to a particular Federal
10 agency, shall be based on the impact of risk assess-
11 ment documents and risk characterization docu-
12 ments on—

13 “(I) regulatory programs administered by
14 that agency; and

15 “(II) the communication of risk informa-
16 tion by that agency to the public.

17 The effective date of such a determination shall be
18 no later than 6 months after the date of the deter-
19 mination.

20 “(ii) Not later than 15 months after the Presi-
21 dent, acting through the Director of the Office of
22 Management and Budget, determines pursuant to
23 clause (i) that a Federal agency should be consid-
24 ered a covered Federal agency for purposes of this
25 subchapter, the head of that agency shall promul-

1 gate a rule pursuant to subparagraph (D) to estab-
2 lish additional categories of risk assessment and risk
3 characterization documents described in that sub-
4 paragraph.

5 “(3) EXCEPTIONS.—(A) This subchapter does
6 not apply to risk assessment or risk characterization
7 documents containing risk assessments or risk char-
8 acterizations performed with respect to the follow-
9 ing:

10 “(i) A screening analysis, where appro-
11 priately labeled as such, including a screening
12 analysis for purposes of product regulation or
13 premanufacturing notices.

14 “(ii) Any health, safety, or environmental
15 inspections.

16 “(iii) The sale or lease of Federal re-
17 sources or regulatory activities that directly re-
18 sult in the collection of Federal receipts.

19 “(B) No analysis shall be treated as a screening
20 analysis for purposes of subparagraph (A) if the re-
21 sults of such analysis are used as the basis for im-
22 posing restrictions on substances or activities.

23 “(C) The risk assessment principle set forth in
24 this 634(b)(1) need not apply to any risk assessment
25 or risk characterization document described in

1 clause (iii) of paragraph (2)(B). The risk character-
2 ization and communication principle set forth in sec-
3 tion 635(4) need not apply to any risk assessment
4 or risk characterization document described in
5 clause (v) or (vi) of paragraph (2)(B).

6 “(c) SAVINGS PROVISIONS.—The provisions of this
7 subchapter shall be supplemental to any other provisions
8 of law relating to risk assessments and risk characteriza-
9 tions, except that nothing in this subchapter shall be con-
10 strued to modify any statutory standard or statutory re-
11 quirement designed to protect health, safety, or the envi-
12 ronment. Nothing in this subchapter shall be interpreted
13 to preclude the consideration of any data or the calculation
14 of any estimate to more fully describe risk or provide ex-
15 amples of scientific uncertainty or variability. Nothing in
16 this subchapter shall be construed to require the disclosure
17 of any trade secret or other confidential information.

18 **“§ 634. Principles for risk assessment**

19 “(a) IN GENERAL.—The head of each covered Fed-
20 eral agency shall apply the principles set forth in sub-
21 section (b) in order to assure that significant risk assess-
22 ment documents and all of their components distinguish
23 scientific findings from other considerations and are, to
24 the extent feasible, scientifically objective, unbiased, and
25 inclusive of all relevant data and rely, to the extent avail-

1 able and practicable, on scientific findings. Discussions or
2 explanations required under this section need not be re-
3 peated in each risk assessment document as long as there
4 is a reference to the relevant discussion or explanation in
5 another agency document which is available to the public.

6 “(b) PRINCIPLES.—The principles to be applied are
7 as follows:

8 “(1) When discussing human health risks, a
9 significant risk assessment document shall contain a
10 discussion of both relevant laboratory and relevant
11 epidemiological data of sufficient quality which finds,
12 or fails to find, a correlation between health risks
13 and a potential toxin or activity. Where conflicts
14 among such data appear to exist, or where animal
15 data is used as a basis to assess human health, the
16 significant risk assessment document shall, to the
17 extent feasible and appropriate, include discussion of
18 possible reconciliation of conflicting information, and
19 as relevant, differences in study designs, compara-
20 tive physiology, routes of exposure, bioavailability,
21 pharmacokinetics, and any other relevant factor, in-
22 cluding the sufficiency of basic data for review. The
23 discussion of possible reconciliation should indicate
24 whether there is a biological basis to assume a re-

1 sulting harm in humans. Animal data shall be re-
2 viewed with regard to its relevancy to humans.

3 “(2) Where a significant risk assessment docu-
4 ment involves selection of any significant assump-
5 tion, inference, or model, the document shall, to the
6 extent feasible—

7 “(A) present a representative list and ex-
8 planation of plausible and alternative assump-
9 tions, inferences, or models;

10 “(B) explain the basis for any choices;

11 “(C) identify any policy or value judg-
12 ments;

13 “(D) fully describe any model used in the
14 risk assessment and make explicit the assump-
15 tions incorporated in the model; and

16 “(E) indicate the extent to which any sig-
17 nificant model has been validated by, or con-
18 flicts with, empirical data.

19 **“§ 635. Principles for risk characterization and com-**
20 **munication**

21 “Each significant risk characterization document
22 shall meet each of the following requirements:

23 “(1) ESTIMATES OF RISK.—The risk character-
24 ization shall describe the populations or natural re-
25 sources which are the subject of the risk character-

1 ization. If a numerical estimate of risk is provided,
2 the agency shall, to the extent feasible, provide—

3 “(A) the best estimate or estimates for the
4 specific populations or natural resources which
5 are the subject of the characterization (based
6 on the information available to the Federal
7 agency); and

8 “(B) a statement of the reasonable range
9 of scientific uncertainties.

10 In addition to such best estimate or estimates, the
11 risk characterization document may present plau-
12 sible upper-bound or conservative estimates in con-
13 junction with plausible lower bound estimates.
14 Where appropriate, the risk characterization docu-
15 ment may present, in lieu of a single best estimate,
16 multiple best estimates based on assumptions, infer-
17 ences, or models which are equally plausible, given
18 current scientific understanding. To the extent prac-
19 tical and appropriate, the document shall provide de-
20 scriptions of the distribution and probability of risk
21 estimates to reflect differences in exposure varia-
22 bility or sensitivity in populations and attendant un-
23 certainties. Sensitive subpopulations or highly ex-
24 posed subpopulations include, where relevant and

1 appropriate, children, the elderly, pregnant women,
2 and disabled persons.

3 “(2) EXPOSURE SCENARIOS.—The risk charac-
4 terization document shall explain the exposure sce-
5 narios used in any risk assessment, and, to the ex-
6 tent feasible, provide a statement of the size of the
7 corresponding population at risk and the likelihood
8 of such exposure scenarios.

9 “(3) COMPARISONS.—The document shall con-
10 tain a statement that places the nature and mag-
11 nitude of risks to human health, safety, or the envi-
12 ronment in context. Such statement shall, to the ex-
13 tent feasible, provide comparisons with estimates of
14 greater, lesser, and substantially equivalent risks
15 that are familiar to and routinely encountered by the
16 general public as well as other risks, and, where ap-
17 propriate and meaningful, comparisons of those risks
18 with other similar risks regulated by the Federal
19 agency resulting from comparable activities and ex-
20 posure pathways. Such comparisons should consider
21 relevant distinctions among risks, such as the vol-
22 untary or involuntary nature of risks and the pre-
23 ventability or nonpreventability of risks.

24 “(4) SUBSTITUTION RISKS.—Each significant
25 risk assessment or risk characterization document

1 shall include a statement of any significant substi-
2 tution risks to human health, where information on
3 such risks has been provided to the agency.

4 “(5) SUMMARIES OF OTHER RISK ESTI-
5 MATES.—If—

6 “(A) a commenter provides a covered Fed-
7 eral agency with a relevant risk assessment doc-
8 ument or a risk characterization document, and
9 a summary thereof, during a public comment
10 provided by the agency for a significant risk as-
11 sessment document or a significant risk charac-
12 terization document, or, where no comment pe-
13 riod is provided but a commenter provides the
14 covered Federal agency with the relevant risk
15 assessment document or risk characterization
16 document, and a summary thereof, in a timely
17 fashion, and

18 “(B) the risk assessment document or risk
19 characterization document is consistent with the
20 principles and the guidance provided under this
21 subchapter,

22 the agency shall, to the extent feasible, present such
23 summary in connection with the presentation of the
24 agency’s significant risk assessment document or
25 significant risk characterization document. Nothing

1 in this paragraph shall be construed to limit the in-
2 clusion of any comments or material supplied by any
3 person to the administrative record of any proceed-
4 ing.

5 A document may satisfy the requirements of paragraph
6 (3), (4) or (5) by reference to information or material oth-
7 erwise available to the public if the document provides a
8 brief summary of such information or material.

9 **“§ 636. Recommendations or classifications by a non-**
10 **United States-based entity**

11 “No covered Federal agency shall automatically in-
12 corporate or adopt any recommendation or classification
13 made by a non-United States-based entity concerning the
14 health effects value of a substance without an opportunity
15 for notice and comment, and any risk assessment docu-
16 ment or risk characterization document adopted by a cov-
17 ered Federal agency on the basis of such a recommenda-
18 tion or classification shall comply with the provisions of
19 this subchapter. For the purposes of this section, the term
20 ‘non-United States-based entity’ means—

21 “(1) any foreign government and its agencies;

22 “(2) the United Nations or any of its subsidiary
23 organizations;

24 “(3) any other international governmental body
25 or international standards-making organization; or

1 “(4) any other organization or private entity
2 without a place of business located in the United
3 States or its territories.

4 **“§ 637. Guidelines and report**

5 “(a) GUIDELINES.—Within 15 months after the date
6 of enactment of this subchapter, the President shall issue
7 guidelines for Federal agencies consistent with the risk as-
8 sessment and characterization principles set forth in sec-
9 tions 634 and 635 and shall provide a format for summa-
10 rizing risk assessment results. In addition, such guidelines
11 shall include guidance on at least the following subjects:
12 criteria for scaling animal studies to assess risks to human
13 health; use of different types of dose-response models;
14 thresholds; definitions, use, and interpretations of the
15 maximum tolerated dose; weighting of evidence with re-
16 spect to extrapolating human health risks from sensitive
17 species; evaluation of benign tumors, and evaluation of dif-
18 ferent human health endpoints.

19 “(b) REPORT.—Within 3 years after the date of the
20 enactment of this subchapter, each covered Federal agency
21 shall provide a report to the Congress evaluating the cat-
22 egories of policy and value judgments identified under sub-
23 paragraph (C) of section 634(b)(2).

24 “(c) PUBLIC COMMENT AND CONSULTATION.—The
25 guidelines and report under this section, shall be developed

1 after notice and opportunity for public comment, and after
2 consultation with representatives of appropriate State,
3 local, and tribal governments, and such other departments
4 and agencies, offices, organizations, or persons as may be
5 advisable.

6 “(d) REVIEW.—The President shall review and,
7 where appropriate, revise the guidelines published under
8 this section at least every 4 years.

9 **“§ 638. Research and training in risk assessment**

10 “(a) EVALUATION.—The head of each covered agency
11 shall regularly and systematically evaluate risk assessment
12 research and training needs of the agency, including,
13 where relevant and appropriate, the following:

14 “(1) Research to reduce generic data gaps, to
15 address modelling needs (including improved model
16 sensitivity), and to validate default options, particu-
17 larly those common to multiple risk assessments.

18 “(2) Research leading to improvement of meth-
19 ods to quantify and communicate uncertainty and
20 variability among individuals, species, populations,
21 and, in the case of ecological risk assessment, eco-
22 logical communities.

23 “(3) Emerging and future areas of research, in-
24 cluding research on comparative risk analysis, expo-
25 sure to multiple chemicals and other stressors,

1 noncancer endpoints, biological markers of exposure
2 and effect, mechanisms of action in both mammalian
3 and nonmammalian species, dynamics and prob-
4 abilities of physiological and ecosystem exposures,
5 and prediction of ecosystem-level responses.

6 “(4) Long-term needs to adequately train indi-
7 viduals in risk assessment and risk assessment appli-
8 cation. Evaluations under this paragraph shall in-
9 clude an estimate of the resources needed to provide
10 necessary training.

11 “(b) STRATEGY AND ACTIONS TO MEET IDENTIFIED
12 NEEDS.—The head of each covered agency shall develop
13 a strategy and schedule for carrying out research and
14 training to meet the needs identified in subsection (a).

15 “(c) REPORT.—Not later than 6 months after the
16 date of the enactment of this subchapter, the head of each
17 covered agency shall submit to the Congress a report on
18 the evaluations conducted under subsection “(a) and the
19 strategy and schedule developed under subsection “(b).
20 The head of each covered agency shall report to the Con-
21 gress periodically on the evaluations, strategy, and sched-
22 ule.

23 **“§ 639. Study of comparative risk analysis**

24 “(a) IN GENERAL.—(1) The Director of the Office
25 of Management and Budget, in consultation with the Of-

1 fice of Science and Technology Policy, shall conduct, or
2 provide for the conduct of, a study using comparative risk
3 analysis to rank health, safety, and environmental risks
4 and to provide a common basis for evaluating strategies
5 for reducing or preventing those risks. The goal of the
6 study shall be to improve methods of comparative risk
7 analysis.

8 “(2) Not later than 90 days after the date of the en-
9 actment of this subchapter, the Director, in collaboration
10 with the heads of appropriate Federal agencies, shall enter
11 into a contract with the National Research Council to pro-
12 vide technical guidance on approaches to using compara-
13 tive risk analysis and other considerations in setting
14 health, safety, and environmental risk reduction priorities.

15 “(b) SCOPE OF STUDY.—The study shall have suffi-
16 cient scope and breadth to evaluate comparative risk anal-
17 ysis and to test approaches for improving comparative risk
18 analysis and its use in setting priorities for health, safety,
19 and environmental risk reduction. The study shall com-
20 pare and evaluate a range of diverse health, safety, and
21 environmental risks.

22 “(c) STUDY PARTICIPANTS.—In conducting the
23 study, the Director shall provide for the participation of
24 a range of individuals with varying backgrounds and ex-

1 pertise, both technical and nontechnical, comprising broad
2 representation of the public and private sectors.

3 “(d) DURATION.—The study shall begin within 180
4 days after the date of the enactment of this subchapter
5 and terminate within 2 years after the date on which it
6 began.

7 “(e) RECOMMENDATIONS FOR IMPROVING COMPARA-
8 TIVE RISK ANALYSIS AND ITS USE.—Not later than 90
9 days after the termination of the study, the Director shall
10 submit to the Congress the report of the National Re-
11 search Council with recommendations regarding the use
12 of comparative risk analysis and ways to improve the use
13 of comparative risk analysis for decision-making in appro-
14 priate Federal agencies.

15 **“§ 639a. Definitions**

16 “For purposes of this subchapter:

17 “(1) RISK ASSESSMENT DOCUMENT.—The term
18 ‘risk assessment document’ means a document con-
19 taining the explanation of how hazards associated
20 with a substance, activity, or condition have been
21 identified, quantified, and assessed. The term also
22 includes a written statement accepting the findings
23 of any such document.

24 “(2) RISK CHARACTERIZATION DOCUMENT.—
25 The term ‘risk characterization document’ means a

1 document quantifying or describing the degree of
2 toxicity, exposure, or other risk posed by hazards as-
3 sociated with a substance, activity, or condition to
4 which individuals, populations, or resources are ex-
5 posed. The term also includes a written statement
6 accepting the findings of any such document.

7 “(3) BEST ESTIMATE.—The term ‘best esti-
8 mate’ means a scientifically appropriate estimate
9 which is based, to the extent feasible, on one of the
10 following:

11 “(A) Central estimates of risk using the
12 most plausible assumptions.

13 “(B) An approach which combines multiple
14 estimates based on different scenarios and
15 weighs the probability of each scenario.

16 “(C) Any other methodology designed to
17 provide the most unbiased representation of the
18 most plausible level of risk, given the current
19 scientific information available to the Federal
20 agency concerned.

21 “(4) SUBSTITUTION RISK.—The term ‘substi-
22 tution risk’ means a potential risk to human health,
23 safety, or the environment from a regulatory alter-
24 native designed to decrease other risks.

1 “(5) COVERED FEDERAL AGENCY.—The term
2 ‘covered Federal agency’ means each of the follow-
3 ing:

4 “(A) The Environmental Protection Agen-
5 cy.

6 “(B) The Occupational Safety and Health
7 Administration.

8 “(C) The Department of Transportation
9 (including the National Highway Transpor-
10 tation Safety Administration).

11 “(D) The Food and Drug Administration.

12 “(E) The Department of Energy.

13 “(F) The Department of the Interior.

14 “(G) The Department of Agriculture.

15 “(H) The Consumer Product Safety Com-
16 mission.

17 “(I) The National Oceanic and Atmos-
18 pheric Administration.

19 “(J) The United States Army Corps of
20 Engineers.

21 “(K) The Mine Safety and Health Admin-
22 istration.

23 “(L) The Nuclear Regulatory Commission.

1 “(M) Any other Federal agency considered
2 a covered Federal agency pursuant to section
3 413(b)(2)(E).

4 “(6) FEDERAL AGENCY.—The term ‘Federal
5 agency’ means an executive department, military de-
6 partment, or independent establishment as defined
7 in part I of title 5 of the United States Code, except
8 that such term also includes the Office of Tech-
9 nology Assessment.

10 “(7) DOCUMENT.—The term ‘document’ in-
11 cludes material stored in electronic or digital form.

12 **“§ 639b. Peer review program**

13 “(a) ESTABLISHMENT.—For regulatory programs de-
14 signed to protect human health, safety, or the environ-
15 ment, the head of each Federal agency shall develop a sys-
16 tematic program for independent and external peer review
17 required by subsection (b). Such program shall be applica-
18 ble across the agency and—

19 “(1) shall provide for the creation of peer re-
20 view panels consisting of experts and shall be broad-
21 ly representative and balanced and to the extent rel-
22 evant and appropriate, may include representatives
23 of State, local, and tribal governments, small busi-
24 nesses, other representatives of industry, univer-
25 sities, agriculture, labor, consumers, conservation or-

1 organizations, or other public interest groups and or-
2 ganizations;

3 “(2) may provide for differing levels of peer re-
4 view and differing numbers of experts on peer review
5 panels, depending on the significance or the com-
6 plexity of the problems or the need for expeditious-
7 ness;

8 “(3) shall not exclude peer reviewers with sub-
9 stantial and relevant expertise merely because they
10 represent entities that may have a potential interest
11 in the outcome, provided that interest is fully dis-
12 closed to the agency and in the case of a regulatory
13 decision affecting a single entity, no peer reviewer
14 representing such entity may be included on the
15 panel;

16 “(4) may provide specific and reasonable dead-
17 lines for peer review panels to submit reports under
18 subsection (c); and

19 “(5) shall provide adequate protections for con-
20 fidential business information and trade secrets, in-
21 cluding requiring peer reviewers to enter into con-
22 fidentiality agreements.

23 “(b) REQUIREMENT FOR PEER REVIEW.—In connec-
24 tion with any rule that is likely to result in an annual
25 increase in costs of \$100,000,000 or more (other than any

1 rule or other action taken by an agency to authorize or
2 approve any individual substance or product), each Fed-
3 eral agency shall provide for peer review in accordance
4 with this section of any risk assessment or cost analysis
5 which forms the basis for such rule or of any analysis
6 under section 431(a). In addition, the Director of the Of-
7 fice of Management and Budget may order that peer re-
8 view be provided for any major risk assessment or cost
9 assessment that is likely to have a significant impact on
10 public policy decisions.

11 “(c) CONTENTS.—Each peer review under this sec-
12 tion shall include a report to the Federal agency concerned
13 with respect to the scientific and economic merit of data
14 and methods used for the assessments and analyses.

15 “(d) RESPONSE TO PEER REVIEW.—The head of the
16 Federal agency shall provide a written response to all sig-
17 nificant peer review comments.

18 “(e) AVAILABILITY TO PUBLIC.—All peer review
19 comments or conclusions and the agency’s responses shall
20 be made available to the public and shall be made part
21 of the administrative record.

22 “(f) PREVIOUSLY REVIEWED DATA AND ANALY-
23 SIS.—No peer review shall be required under this section
24 for any data or method which has been previously sub-

1 jected to peer review or for any component of any analysis
2 or assessment previously subjected to peer review.

3 “(g) NATIONAL PANELS.—The President shall ap-
4 point National Peer Review Panels to annually review the
5 risk assessment and cost assessment practices of each
6 Federal agency for programs designed to protect human
7 health, safety, or the environment. The Panel shall submit
8 a report to the Congress no less frequently than annually
9 containing the results of such review.

10 **“§ 639c. Petition for review of a major free-standing**
11 **risk assessment**

12 “(a) Any interested person may petition an agency
13 to conduct a scientific review of a risk assessment con-
14 ducted or adopted by the agency, except for a risk assess-
15 ment used as the basis for a major rule or a site-specific
16 risk assessment.

17 “(b) The agency shall utilize external peer review, as
18 appropriate, to evaluate the claims and analyses in the pe-
19 tition, and shall consider such review in making its deter-
20 mination of whether to grant the petition.

21 “(c) The agency shall grant the petition if the peti-
22 tion establishes that there is a reasonable likelihood that—

23 “(1)(A) the risk assessment that is the subject
24 of the petition was carried out in a manner substan-

1 tially inconsistent with the principles in section 633;
2 or

3 “(B) the risk assessment that is the subject of
4 the petition does not take into account material sig-
5 nificant new scientific data and scientific under-
6 standing;

7 “(2) the risk assessment that is the subject of
8 the petition contains significantly different results
9 than if it had been properly conducted pursuant to
10 subchapter III; and

11 “(3) a revised risk assessment will provide the
12 basis for reevaluating an agency determination of
13 risk, and such determination currently has an effect
14 on the United States economy equivalent to that of
15 major rule.

16 “(d) A decision to grant, or final action to deny, a
17 petition under this subsection shall be made not later than
18 180 days after the petition is submitted.

19 “(e) If the agency grants the petition, it shall com-
20 plete its review of the risk assessment not later than 1
21 year after its decision to grant the petition. If the agency
22 revises the risk assessment, in response to its review, it
23 shall do so in accordance with section 633.

1 **“§ 639d. Risk-based priorities**

2 “(a) PURPOSES.—The purposes of this section are
3 to—

4 “(1) encourage Federal agencies engaged in
5 regulating risks to human health, safety, and the en-
6 vironment to achieve the greatest risk reduction at
7 the least cost practical;

8 “(2) promote the coordination of policies and
9 programs to reduce risks to human health, safety,
10 and the environment; and

11 “(3) promote open communication among Fed-
12 eral agencies, the public, the President, and Con-
13 gress regarding environmental, health, and safety
14 risks, and the prevention and management of those
15 risks.

16 “(b) DEFINITIONS.—For the purposes of this section:

17 “(1) COMPARATIVE RISK ANALYSIS.—The term
18 ‘comparative risk analysis’ means a process to sys-
19 tematically estimate, compare, and rank the size and
20 severity of risks to provide a common basis for eval-
21 uating strategies for reducing or preventing those
22 risks.

23 “(2) COVERED AGENCY.—The term ‘covered
24 agency’ means each of the following:

25 “(A) The Environmental Protection Agen-
26 cy.

1 “(B) The Department of Labor.

2 “(C) The Department of Transportation.

3 “(D) The Food and Drug Administration.

4 “(E) The Department of Energy.

5 “(F) The Department of the Interior.

6 “(G) The Department of Agriculture.

7 “(H) The Consumer Product Safety Com-
8 mission.

9 “(I) The National Oceanic and Atmos-
10 pheric Administration.

11 “(J) The United States Army Corps of
12 Engineers.

13 “(K) The Nuclear Regulatory Commission.

14 “(3) EFFECT.—The term ‘effect’ means a dele-
15 terious change in the condition of—

16 “(A) a human or other living thing (includ-
17 ing death, cancer, or other chronic illness, de-
18 creased reproductive capacity, or disfigure-
19 ment); or

20 “(B) an inanimate thing important to
21 human welfare (including destruction, degenera-
22 tion, the loss of intended function, and in-
23 creased costs for maintenance).

24 “(4) IRREVERSIBILITY.—The term
25 ‘irreversibility’ means the extent to which a return

1 to conditions before the occurrence of an effect are
2 either very slow or will never occur.

3 “(5) LIKELIHOOD.—The term ‘likelihood’
4 means the estimated probability that an effect will
5 occur.

6 “(6) MAGNITUDE.—The term ‘magnitude’
7 means the number of individuals or the quantity of
8 ecological resources or other resources that contrib-
9 ute to human welfare that are affected by exposure
10 to a stressor.

11 “(7) SERIOUSNESS.—The term ‘seriousness’
12 means the intensity of effect, the likelihood, the
13 irreversibility, and the magnitude.

14 “(c) DEPARTMENT AND AGENCY PROGRAM GOALS.—

15 “(1) SETTING PRIORITIES.—In exercising au-
16 thority under applicable laws protecting human
17 health, safety, or the environment, the head of each
18 covered agency shall set priorities for the use of re-
19 sources available under those laws to address those
20 risks to human health, safety, and the environment
21 that—

22 “(A) the covered agency determines to be
23 most serious; and

24 “(B) can be addressed in a cost-effective
25 manner, with the goal of achieving the greatest

1 overall net reduction in risks with the public
2 and private sector resources expended.

3 “(2) DETERMINING THE MOST SERIOUS
4 RISKS.—In identifying the greatest risks under para-
5 graph (1) of this subsection, each covered agency
6 shall consider, at a minimum—

7 “(A) the likelihood, irreversibility, and se-
8 verity of the effect; and

9 “(B) the number and classes of individuals
10 potentially affected,

11 and shall explicitly take into account the results of
12 the comparative risk analysis conducted under sub-
13 section (d) of this section.

14 “(3) OMB REVIEW.—The covered agency’s de-
15 terminations of the most serious risks for purposes
16 of setting priorities shall be reviewed and approved
17 by the Director of the Office of Management and
18 Budget before submission of the covered agency’s
19 annual budget requests to Congress.

20 “(4) INCORPORATING RISK-BASED PRIORITIES
21 INTO BUDGET AND PLANNING.—The head of each
22 covered agency shall incorporate the priorities identi-
23 fied under paragraph (1) into the agency budget,
24 strategic planning, regulatory agenda, enforcement,
25 and research activities. When submitting its budget

1 request to Congress and when announcing its regu-
2 latory agenda in the Federal Register, each covered
3 agency shall identify the risks that the covered agen-
4 cy head has determined are the most serious and
5 can be addressed in a cost-effective manner under
6 paragraph (1), the basis for that determination, and
7 explicitly identify how the covered agency's requested
8 budget and regulatory agenda reflect those prior-
9 ities.

10 “(5) EFFECTIVE DATE.—This subsection shall
11 take effect 12 months after the date of enactment
12 of this Act.

13 “(d) COMPARATIVE RISK ANALYSIS.—

14 “(1) REQUIREMENT.—

15 “(A)(i) No later than 6 months after the
16 effective date of this Act, the Director of the
17 Office of Management and Budget shall enter
18 into appropriate arrangements with a nationally
19 recognized scientific institution or scholarly or-
20 ganization—

21 “(I) to conduct a study of the meth-
22 odologies for using comparative risk to
23 rank dissimilar human health, safety, and
24 environmental risks; and

1 “(II) to conduct a comparative risk
2 analysis.

3 “(ii) The comparative risk analysis shall
4 compare and rank, to the extent feasible,
5 human health, safety, and environmental risks
6 potentially regulated across the spectrum of
7 programs administered by all covered agencies.

8 “(B) The Director shall consult with the
9 Office of Science and Technology Policy regard-
10 ing the scope of the study and the conduct of
11 the comparative risk analysis.

12 “(C) Nothing in this subsection should be
13 construed to prevent the Director from entering
14 into a sole-source arrangement with a nationally
15 recognized scientific institution or scholarly or-
16 ganization.

17 “(2) CRITERIA.—The Director shall ensure that
18 the arrangement under paragraph (1) provides
19 that—

20 “(A) the scope and specificity of the analy-
21 sis are sufficient to provide the President and
22 agency heads guidance in allocating resources
23 across agencies and among programs in agen-
24 cies to achieve the greatest degree of risk pre-

1 vention and reduction for the public and private
2 resources expended;

3 “(B) the analysis is conducted through an
4 open process, including opportunities for the
5 public to submit views, data, and analyses and
6 to provide public comment on the results before
7 making them final;

8 “(C) the analysis is conducted by a bal-
9 anced group of individuals with relevant exper-
10 tise, including toxicologists, biologists, engi-
11 neers, and experts in medicine, industrial hy-
12 giene, and environmental effects, and the selec-
13 tion of members for such study shall be at the
14 sole discretion of the scientific institution or
15 scholarly organization;

16 “(D) the analysis is conducted, to the ex-
17 tent feasible and relevant, consistent with the
18 risk assessment and risk characterization prin-
19 ciples in section 633 of this subchapter;

20 “(E) the methodologies and principal sci-
21 entific determinations made in the analysis are
22 subjected to independent peer review consistent
23 with section 633(g), and the conclusions of the
24 peer review are made publicly available as part

1 of the final report required under subsection
2 (e); and

3 “(F) the results are presented in a manner
4 that distinguishes between the scientific conclu-
5 sions and any policy or value judgments em-
6 bodied in the comparisons.

7 “(3) COMPLETION AND REVIEW.—No later than
8 3 years after the effective date of this Act, the com-
9 parative risk analysis required under paragraph (1)
10 shall be completed. The comparative risk analysis
11 shall be reviewed and revised at least every 5 years
12 thereafter for a minimum of 15 years following the
13 release of the first analysis. The Director shall ar-
14 range for such review and revision by an accredited
15 scientific body in the same manner as provided
16 under paragraphs (1) and (2).

17 “(4) STUDY.—The study of methodologies pro-
18 vided under paragraph (1) shall be conducted as
19 part of the first comparative risk analysis and shall
20 be completed no later than 180 days after the com-
21 pletion of that analysis. The goal of the study shall
22 be to develop and rigorously test methods of com-
23 parative risk analysis. The study shall have suffi-
24 cient scope and breadth to test approaches for im-
25 proving comparative risk analysis and its use in set-

1 ting priorities for human health, safety, and environ-
2 mental risk prevention and reduction.

3 “(5) TECHNICAL GUIDANCE.—No later than
4 180 days after the effective date of this Act, the Di-
5 rector, in collaboration with other heads of covered
6 agencies shall enter into a contract with the Na-
7 tional Research Council to provide technical guid-
8 ance to agencies on approaches to using comparative
9 risk analysis in setting human health, safety, and
10 environmental priorities to assist agencies in comply-
11 ing with subsection (c) of this section.

12 “(e) REPORTS AND RECOMMENDATIONS TO CON-
13 GRESS AND THE PRESIDENT.—No later than 24 months
14 after the effective date of this Act, each covered agency
15 shall submit a report to Congress and the President—

16 “(1) detailing how the agency has complied
17 with subsection (c) and describing the reason for
18 any departure from the requirement to establish pri-
19 orities to achieve the greatest overall net reduction
20 in risk;

21 “(2) recommending—

22 “(A) modification, repeal, or enactment of
23 laws to reform, eliminate, or enhance programs
24 or mandates relating to human health, safety,
25 or the environment; and

1 “(B) modification or elimination of statu-
2 tory or judicially mandated deadlines,that would
3 assist the covered agency to set priorities in ac-
4 tivities to address the risks to human health,
5 safety, or the environment in a manner consist-
6 ent with the requirements of subsection (c)(1);

7 “(3) evaluating the categories of policy and
8 value judgment used in risk assessment, risk charac-
9 terization, or cost-benefit analysis; and

10 “(4) discussing risk assessment research and
11 training needs, and the agency’s strategy and sched-
12 ule for meeting those needs.

13 “(f) SAVINGS PROVISION AND JUDICIAL REVIEW.—

14 “(1) IN GENERAL.—Nothing in this section
15 shall be construed to modify any statutory standard
16 or requirement designed to protect human health,
17 safety, or the environment.

18 “(2) JUDICIAL REVIEW.—Compliance or non-
19 compliance by an agency with the provisions of this
20 section shall not be subject to judicial review.

21 “(3) AGENCY ANALYSIS.—Any analysis pre-
22 pared under this section shall not be subject to judi-
23 cial consideration separate or apart from the re-
24 quirement, rule, program, or law to which it relates.

25 When an action for judicial review of a covered

1 agency action is instituted, any analysis for, or relat-
 2 ing to, the action shall constitute part of the whole
 3 record of agency action for the purpose of judicial
 4 review of the action and shall, to the extent relevant,
 5 be considered by a court in determining the legality
 6 of the covered agency action.”.

7 (b) CLERICAL AMENDMENT.—The table of sections
 8 appearing at the beginning of chapter 6 of title 5, United
 9 States Code, is amended—

10 (1) by inserting immediately below the chapter
 11 heading the following:

“SUBCHAPTER I—REGULATORY ANALYSIS”; and

12 (2) by adding at the end the following:

“SUBCHAPTER III—RISK ASSESSMENTS

“631. Short title.

“632. Purposes.

“633. Effective date; applicability; savings provisions.

“634. Principles for risk assessment.

“635. Principles for risk characterization and communication.

“636. Recommendations or classifications by a non-United States-based entity.

“637. Guidelines and report.

“638. Research and training in risk assessment.

“639. Study of comparative risk analysis.

“639a. Definitions.

“639b. Peer review program.

“639c. Petition for review of a major free-standing risk assessment.

“639d. Risk-based priorities.”.

13 **SEC. 3004. REGULATORY FLEXIBILITY ANALYSIS.**

14 (a) IN GENERAL.—

15 (1) JUDICIAL REVIEW.—

1 (A) AMENDMENT.—Section 611 of title 5,
2 United States Code, is amended to read as fol-
3 lows:

4 **“§ 611. Judicial review**

5 “(a)(1) Not later than one year, notwithstanding any
6 other provision of law, after the effective date of a final
7 rule with respect to which an agency—

8 “(A) certified, pursuant to section 605(b), that
9 such rule would not have a significant economic im-
10 pact on a substantial number of small entities; or

11 “(B) prepared a final regulatory flexibility anal-
12 ysis pursuant to section 604,

13 an affected small entity may petition for the judicial re-
14 view of such certification or analysis in accordance with
15 the terms of this subsection. A court having jurisdiction
16 to review such rule for compliance with the provisions of
17 section 553 or under any other provision of law shall have
18 jurisdiction to review such certification or analysis. In the
19 case where an agency delays the issuance of a final regu-
20 latory flexibility analysis pursuant to section 608(b), a pe-
21 tition for judicial review under this subsection shall be
22 filed not later than one year, notwithstanding any other
23 provision of law, after the date the analysis is made avail-
24 able to the public.

1 “(2) For purposes of this subsection, the term ‘af-
2 fected small entity’ means a small entity that is or will
3 be adversely affected by the final rule.

4 “(3) Nothing in this subsection shall be construed to
5 affect the authority of any court to stay the effective date
6 of any rule or provision thereof under any other provision
7 of law.

8 “(4)(A) In the case where the agency certified that
9 such rule would not have a significant economic impact
10 on a substantial number of small entities, the court may
11 order the agency to prepare a final regulatory flexibility
12 analysis pursuant to section 604 if the court determines,
13 on the basis of the rulemaking record, that the certifi-
14 cation was arbitrary, capricious, an abuse of discretion,
15 or otherwise not in accordance with law.

16 “(B) In the case where the agency prepared a final
17 regulatory flexibility analysis, the court may order the
18 agency to take corrective action consistent with the re-
19 quirements of section 604 if the court determines, on the
20 basis of the rulemaking record, that the final regulatory
21 flexibility analysis was prepared by the agency without ob-
22 servance of procedure required by section 604.

23 “(5) If, by the end of the 90-day period beginning
24 on the date of the order of the court pursuant to para-

1 graph (4) (or such longer period as the court may pro-
2 vide), the agency fails, as appropriate—

3 “(A) to prepare the analysis required by section
4 604; or

5 “(B) to take corrective action consistent with
6 the requirements of section 604,

7 the court may stay the rule or grant such other relief as
8 it deems appropriate.

9 “(6) In making any determination or granting any
10 relief authorized by this subsection, the court shall take
11 due account of the rule of prejudicial error.

12 “(b) In an action for the judicial review of a rule,
13 any regulatory flexibility analysis for such rule (including
14 an analysis prepared or corrected pursuant to subsection
15 (a)(4)) shall constitute part of the whole record of agency
16 action in connection with such review.

17 “(c) Nothing in this section bars judicial review of
18 any other impact statement or similar analysis required
19 by any other law if judicial review of such statement or
20 analysis is otherwise provided by law.”.

21 (B) EFFECTIVE DATE.—The amendment
22 made by subsection (a) shall apply only to final
23 agency rules issued after the date of enactment
24 of this Act.

1 (2) RULES COMMENTED ON BY SBA CHIEF
2 COUNSEL FOR ADVOCACY.—

3 (A) IN GENERAL.—Section 612 of title 5,
4 United States Code, is amended by adding at
5 the end the following new subsection:

6 “(d) ACTION BY THE SBA CHIEF COUNSEL FOR AD-
7 VOCACY.—

8 “(1) TRANSMITTAL OF PROPOSED RULES AND
9 INITIAL REGULATORY FLEXIBILITY ANALYSIS TO
10 SBA CHIEF COUNSEL FOR ADVOCACY.—On or before
11 the 30th day preceding the date of publication by an
12 agency of general notice of proposed rulemaking for
13 a rule, the agency shall transmit to the Chief Coun-
14 sel for Advocacy of the Small Business Administra-
15 tion—

16 “(A) a copy of the proposed rule; and

17 “(B)(i) a copy of the initial regulatory
18 flexibility analysis for the rule if required under
19 section 603; or

20 “(ii) a determination by the agency that an
21 initial regulatory flexibility analysis is not re-
22 quired for the proposed rule under section 603
23 and an explanation for the determination.

24 “(2) STATEMENT OF EFFECT.—On or before
25 the 15th day following receipt of a proposed rule and

1 initial regulatory flexibility analysis from an agency
2 under paragraph (1), the Chief Counsel for Advo-
3 cacy may transmit to the agency a written statement
4 of the effect of the proposed rule on small entities.

5 “(3) RESPONSE.—If the Chief Counsel for Ad-
6 vocacy transmits to an agency a statement of effect
7 on a proposed rule in accordance with paragraph
8 (2), the agency shall publish the statement, together
9 with the response of the agency to the statement, in
10 the Federal Register at the time of publication of
11 general notice of proposed rulemaking for the rule.

12 “(4) SPECIAL RULE.—Any proposed rules is-
13 sued by an appropriate Federal banking agency (as
14 that term is defined in section 3(q) of the Federal
15 Deposit Insurance Act (12 U.S.C. 1813(q)), the Na-
16 tional Credit Union Administration, or the Office of
17 Federal Housing Enterprise Oversight, in connection
18 with the implementation of monetary policy or to en-
19 sure the safety and soundness of federally insured
20 depository institutions, any affiliate of such an insti-
21 tution, credit unions, or government sponsored hous-
22 ing enterprises or to protect the Federal deposit in-
23 surance funds shall not be subject to the require-
24 ments of this subsection.”.

1 (B) CONFORMING AMENDMENT.—Section
2 603(a) of title 5, United States Code, is amend-
3 ed by inserting “in accordance with section
4 612(d)” before the period at the end of the last
5 sentence.

6 (3) SENSE OF CONGRESS REGARDING SBA
7 CHIEF COUNSEL FOR ADVOCACY.—It is the sense of
8 Congress that the Chief Counsel for Advocacy of the
9 Small Business Administration should be permitted
10 to appear as amicus curiae in any action or case
11 brought in a court of the United States for the pur-
12 pose of reviewing a rule.

13 (b) SUBCHAPTER HEADING.—Chapter 6 of title 5,
14 United States Code, is amended by inserting immediately
15 before section 601, the following subchapter heading:

16 “SUBCHAPTER I—REGULATORY ANALYSIS”.

17 **SEC. 3005. GUIDANCE FOR JUDICIAL INTERPRETATION.**

18 (a) IN GENERAL.—Chapter 7 of title 5, United
19 States Code, is amended—

20 (1) by striking section 706; and

21 (2) by adding at the end the following new sec-
22 tions:

23 **“§ 706. Scope of review**

24 “(a) To the extent necessary to reach a decision and
25 when presented, the reviewing court shall decide all rel-

1 evant questions of law, interpret constitutional and statu-
2 tory provisions, and determine the meaning or applicabil-
3 ity of the terms of an agency action. The reviewing court
4 shall—

5 “(1) compel agency action unlawfully withheld
6 or unreasonably delayed; and

7 “(2) hold unlawful and set aside agency action,
8 findings and conclusions found to be—

9 “(A) arbitrary, capricious, an abuse of dis-
10 cretion, or otherwise not in accordance with
11 law;

12 “(B) contrary to constitutional right,
13 power, privilege, or immunity;

14 “(C) in excess of statutory jurisdiction, au-
15 thority, or limitations, or short of statutory
16 right;

17 “(D) without observance of procedure re-
18 quired by law;

19 “(E) unsupported by substantial evidence
20 in a proceeding subject to sections 556 and 557
21 or otherwise reviewed on the record of an agen-
22 cy hearing provided by statute; or

23 “(F) unwarranted by the facts to the ex-
24 tent that the facts are subject to trial de novo
25 by the reviewing court.

1 “(b) In making the determinations set forth in sub-
2 section (a), the court shall review the whole record or
3 those parts of it cited by a party, and due account shall
4 be taken of the rule of prejudicial error.

5 **“§ 707. Consent decrees**

6 “In interpreting any consent decree in effect on or
7 after the date of enactment of this section that imposes
8 on an agency an obligation to initiate, continue, or com-
9 plete rulemaking proceedings, the court shall not enforce
10 the decree in a way that divests the agency of discretion
11 clearly granted to the agency by statute to respond to
12 changing circumstances, make policy or managerial
13 choices, or protect the rights of third parties.

14 **“§ 708. Affirmative defense**

15 “Notwithstanding any other provision of law, it shall
16 be an affirmative defense in any enforcement action
17 brought by an agency that the regulated person or entity
18 reasonably relied on and is complying with a rule, regula-
19 tion, adjudication, directive, or order of such agency or
20 any other agency that is incompatible, contradictory, or
21 otherwise cannot be reconciled with the agency rule, regu-
22 lation, adjudication, directive, or order being enforced.

1 **“§ 709. Agency interpretations in civil and criminal**
2 **actions**

3 “(a) No civil or criminal penalty shall be imposed by
4 a court, and no civil administrative penalty shall be im-
5 posed by an agency, for the violation of a rule—

6 “(1) if the court or agency, as appropriate,
7 finds that the rule failed to give the defendant fair
8 warning of the conduct that the rule prohibits or re-
9 quires; or

10 “(2) if the court or agency, as appropriate,
11 finds that the defendant acted reasonably in good
12 faith based upon the language of the rule as pub-
13 lished in the Federal Register.

14 “(b) Nothing in this section shall be construed to pre-
15 clude an agency:

16 “(1) from revising a rule or changing its inter-
17 pretation of a rule in accordance with sections 552
18 and 553 of this title, and subject to the provisions
19 of this section, prospectively enforcing the require-
20 ments of such rule as revised or reinterpreted and
21 imposing or seeking a civil or criminal penalty for
22 any subsequent violation of such rule as revised or
23 reinterpreted;

24 “(2) from making a new determination of fact,
25 and based upon such determination, prospectively
26 applying a particular legal requirement.

1 “(c) This section shall apply to any action filed after
2 the date of the enactment of the Comprehensive Regu-
3 latory Reform Act of 1995.”.

4 (b) TECHNICAL AMENDMENT.—The analysis for
5 chapter 7 of title 5, United States Code, is amended by
6 striking the item relating to section 706 and inserting the
7 following new items:

“706. Scope of review.

“707. Consent decrees.

“708. Affirmative defense.

“709. Agency interpretations in civil and criminal actions.”.

8 **SEC. 3006. CONGRESSIONAL REVIEW.**

9 (a) FINDING.—The Congress finds that effective
10 steps for improving the efficiency and proper management
11 of Government operations will be promoted if a morato-
12 rium on the implementation of certain major final and
13 proposed rules is imposed in order to provide Congress
14 an opportunity for review.

15 (b) IN GENERAL.—Title 5, United States Code, is
16 amended by inserting immediately after chapter 7 the fol-
17 lowing new chapter:“

18 **CHAPTER 8—CONGRESSIONAL REVIEW OF** 19 **AGENCY RULEMAKING**

“Sec.

“801. Congressional review.

“802. Congressional disapproval procedure.

“803. Special rule on statutory, regulatory, and judicial deadlines.

“804. Definitions.

“805. Judicial review.

“806. Applicability; severability.

“807. Exemption for monetary policy.

1 **“§ 801. Congressional review**

2 “(a)(1)(A) Before a rule can take effect as a final
3 rule, the Federal agency promulgating such rule shall sub-
4 mit to each House of the Congress and to the Comptroller
5 General a report containing—

6 “(i) a copy of the rule;

7 “(ii) a concise general statement relating to the
8 rule; and

9 “(iii) the proposed effective date of the rule.

10 “(B) The Federal agency promulgating the rule shall
11 make available to each House of Congress and the Comp-
12 troller General, upon request—

13 “(i) a complete copy of the cost-benefit analysis
14 of the rule, if any;

15 “(ii) the agency’s actions relevant to sections
16 603, 604, 605, 607, and 609;

17 “(iii) the agency’s actions relevant to sections
18 202, 203, 204, and 205 of the Unfunded Mandates
19 Reform Act of 1995; and

20 “(iv) any other relevant information or require-
21 ments under any other Act and any relevant Execu-
22 tive orders, such as Executive Order No. 12866.

23 “(C) Upon receipt, each House shall provide copies
24 to the Chairman and Ranking Member of each committee
25 with jurisdiction.

1 “(2)(A) The Comptroller General shall provide a re-
2 port on each major rule to the committees of jurisdiction
3 to each House of the Congress by the end of 12 calendar
4 days after the submission or publication date as provided
5 in section 802(b)(2). The report of the Comptroller Gen-
6 eral shall include an assessment of the agency’s compli-
7 ance with procedural steps required by paragraph (1)(B).

8 “(B) Federal agencies shall cooperate with the Comp-
9 troller General by providing information relevant to the
10 Comptroller General’s report under subparagraph (A).

11 “(3) A major rule relating to a report submitted
12 under paragraph (1) shall take effect as a final rule, the
13 latest of—

14 “(A) the later of the date occurring 60 days
15 (excluding days either House of Congress is ad-
16 journed for more than 3 days during a session of
17 Congress) after the date on which—

18 “(i) the Congress receives the report sub-
19 mitted under paragraph (1); or

20 “(ii) the rule is published in the Federal
21 Register;

22 “(B) if the Congress passes a joint resolution of
23 disapproval described under section 802 relating to
24 the rule, and the President signs a veto of such reso-
25 lution, the earlier date—

1 “(i) on which either House of Congress
2 votes and fails to override the veto of the Presi-
3 dent; or

4 “(ii) occurring 30 session days after the
5 date on which the Congress received the veto
6 and objections of the President; or

7 “(C) the date the rule would have otherwise
8 taken effect, if not for this section (unless a joint
9 resolution of disapproval under section 802 is en-
10 acted).

11 “(4) Except for a major rule, a rule shall take effect
12 as otherwise provided by law after submission to Congress
13 under paragraph (1).

14 “(5) Notwithstanding paragraph (3), the effective
15 date of a rule shall not be delayed by operation of this
16 chapter beyond the date on which either House of Con-
17 gress votes to reject a joint resolution of disapproval under
18 section 802.

19 “(b)(1) A rule or proposed rule shall not take effect
20 (or continue) as a final rule, if the Congress passes a joint
21 resolution of disapproval described under section 802.

22 “(2) A rule or proposed rule that does not take effect
23 (or does not continue) under paragraph (1) may not be
24 reissued in substantially the same form, and a new rule
25 that is substantially the same as such a rule or proposed

1 rule may not be issued, unless the reissued or new rule
2 is specifically authorized by a law enacted after the date
3 of the joint resolution disapproving the original rule.

4 “(c)(1) Notwithstanding any other provision of this
5 section (except subject to paragraph (3)), a rule that
6 would not take effect by reason of this chapter may take
7 effect, if the President makes a determination under para-
8 graph (2) and submits written notice of such determina-
9 tion to the Congress.

10 “(2) Paragraph (1) applies to a determination made
11 by the President by Executive order that the rule should
12 take effect because such rule is—

13 “(A) necessary because of an imminent threat
14 to health or safety or other emergency;

15 “(B) necessary for the enforcement of criminal
16 laws;

17 “(C) necessary for national security; or

18 “(D) issued pursuant to a statute implementing
19 an international trade agreement.

20 “(3) An exercise by the President of the authority
21 under this subsection shall have no effect on the proce-
22 dures under section 802 or the effect of a joint resolution
23 of disapproval under this section.

24 “(d)(1) In addition to the opportunity for review oth-
25 erwise provided under this chapter, in the case of any rule

1 that is published in the Federal Register (as a rule that
2 shall take effect as a final rule) during the period begin-
3 ning on the date occurring 60 days before the date the
4 Congress adjourns a session of Congress through the date
5 on which the same or succeeding Congress first convenes
6 its next session, section 802 shall apply to such rule in
7 the succeeding session of Congress.

8 “(2)(A) In applying section 802 for purposes of such
9 additional review, a rule described under paragraph (1)
10 shall be treated as though—

11 “(i) such rule were published in the Federal
12 Register (as a rule that shall take effect as a final
13 rule) on the 15th session day after the succeeding
14 Congress first convenes; and

15 “(ii) a report on such rule were submitted to
16 Congress under subsection (a)(1) on such date.

17 “(B) Nothing in this paragraph shall be construed
18 to affect the requirement under subsection (a)(1) that a
19 report shall be submitted to Congress before a final rule
20 can take effect.

21 “(3) A rule described under paragraph (1) shall take
22 effect as a final rule as otherwise provided by law (includ-
23 ing other subsections of this section).

24 “(e)(1) Section 802 shall apply in accordance with
25 its terms to any major rule that was published in the Fed-

1 eral Register (as a rule that shall take effect as a final
2 rule) in the period beginning on November 20, 1994,
3 through the date of enactment of the Comprehensive Reg-
4 ulatory Reform Act of 1995.

5 “(2) In applying section 802 for purposes of Congres-
6 sional review, a rule described under paragraph (1) shall
7 be treated as though—

8 “(A) such rule were published in the Federal
9 Register (as a rule that shall take effect as a final
10 rule) on the date of enactment of the Comprehensive
11 Regulatory Reform Act of 1995; and

12 “(B) a report on such rule were submitted to
13 Congress under subsection (a)(1) on such date.

14 “(3) The effectiveness of a rule described under para-
15 graph (1) shall be as otherwise provided by law, unless
16 the rule is made of no force or effect under section 802.

17 “(f) Any rule that takes effect and later is made of
18 no force or effect by enactment of a joint resolution under
19 section 802 shall be treated as though such rule had never
20 taken effect.

21 “(g) If the Congress does not enact a joint resolution
22 of disapproval under section 802, no court or agency may
23 infer any intent of the Congress from any action or inac-
24 tion of the Congress with regard to such rule, related stat-
25 ute, or joint resolution of disapproval.

1 **“§ 802. Congressional disapproval procedure**

2 “(a) JOINT RESOLUTION DEFINED.—For purposes
3 of this section, the term ‘joint resolution’ means only—

4 “(1) a joint resolution introduced in the period
5 beginning on the date on which the report referred
6 to in section 801(a) is received by Congress and end-
7 ing 60 days thereafter (excluding days either House
8 of Congress is adjourned for more than 3 days dur-
9 ing a session of Congress), the matter after the re-
10 solving clause of which is as follows: ‘That Congress
11 disapproves the rule submitted by the ____ relating
12 to ____, and such rule shall have no force or effect.’
13 (The blank spaces being appropriately filled in); or

14 “(2) a joint resolution the matter after the re-
15 solving clause of which is as follows: ‘That the Con-
16 gress disapproves the proposed rule published by the
17 _____ relating to _____, and such proposed
18 rule shall not be issued or take effect as a final
19 rule.’ (the blank spaces being appropriately filled in)

20 “(b)(1) A joint resolution described in subsection (a)
21 shall be referred to the committees in each House of Con-
22 gress with jurisdiction.

23 “(2) For purposes of this section, the term ‘submis-
24 sion or publication date’ means—

25 “(A) in the case of a joint resolution described
26 in subsection (a)(1) the later of the date on which—

1 “(i) the Congress receives the report sub-
2 mitted under section 801(a)(1); or

3 “(ii) the rule is published in the Federal
4 Register; or

5 “(B) in the case of a joint resolution described
6 in subsection (a)(2), the date of introduction of the
7 joint resolution.

8 “(c) In the Senate, if the committee to which is re-
9 ferred a joint resolution described in subsection (a) has
10 not reported such joint resolution (or an identical joint
11 resolution) at the end of 20 calendar days after the sub-
12 mission or publication date defined under subsection
13 (b)(2), such committee may be discharged from further
14 consideration of such joint resolution upon a petition sup-
15 ported in writing by 30 Members of the Senate, and such
16 joint resolution shall be placed on the appropriate cal-
17 endar.

18 “(d)(1) In the Senate, when the committee to which
19 a joint resolution is referred has reported, or when a com-
20 mittee is discharged (under subsection (c)) from further
21 consideration of, a joint resolution described in subsection
22 (a), it is at any time thereafter in order (even though a
23 previous motion to the same effect has been disagreed to)
24 for a motion to proceed to the consideration of the joint
25 resolution, and all points of order against the joint resolu-

1 tion (and against consideration of the joint resolution) are
2 waived. The motion is not subject to amendment, or to
3 a motion to postpone, or to a motion to proceed to the
4 consideration of other business. A motion to reconsider the
5 vote by which the motion is agreed to or disagreed to shall
6 not be in order. If a motion to proceed to the consideration
7 of the joint resolution is agreed to, the joint resolution
8 shall remain the unfinished business of the Senate until
9 disposed of.

10 “(2) In the Senate, debate on the joint resolution,
11 and on all debatable motions and appeals in connection
12 therewith, shall be limited to not more than 10 hours,
13 which shall be divided equally between those favoring and
14 those opposing the joint resolution. A motion further to
15 limit debate is in order and not debatable. An amendment
16 to, or a motion to postpone, or a motion to proceed to
17 the consideration of other business, or a motion to recom-
18 mit the joint resolution is not in order.

19 “(3) In the Senate, immediately following the conclu-
20 sion of the debate on a joint resolution described in sub-
21 section (a), and a single quorum call at the conclusion of
22 the debate if requested in accordance with the rules of the
23 Senate, the vote on final passage of the joint resolution
24 shall occur.

1 “(4) Appeals from the decisions of the Chair relating
2 to the application of the rules of the Senate to the proce-
3 dure relating to a joint resolution described in subsection
4 (a) shall be decided without debate.

5 “(e) If, before the passage by one House of a joint
6 resolution of that House described in subsection (a), that
7 House receives from the other House a joint resolution
8 described in subsection (a), then the following procedures
9 shall apply:

10 “(1) The joint resolution of the other House
11 shall not be referred to a committee.

12 “(2) With respect to a joint resolution described
13 in subsection (a) of the House receiving the joint
14 resolution—

15 “(A) the procedure in that House shall be
16 the same as if no joint resolution had been re-
17 ceived from the other House; but

18 “(B) the vote on final passage shall be on
19 the joint resolution of the other House.

20 “(f) This section is enacted by Congress—

21 “(1) as an exercise of the rulemaking power of
22 the Senate and House of Representatives, respec-
23 tively, and as such it is deemed a part of the rules
24 of each House, respectively, but applicable only with
25 respect to the procedure to be followed in that

1 House in the case of a joint resolution described in
2 subsection (a), and it supersedes other rules only to
3 the extent that it is inconsistent with such rules; and
4 “(2) with full recognition of the constitutional
5 right of either House to change the rules (so far as
6 relating to the procedure of that House) at any time,
7 in the same manner, and to the same extent as in
8 the case of any other rule of that House.

9 **“§ 803. Special rule on statutory, regulatory, and judi-**
10 **cial deadlines**

11 “(a) In the case of any deadline for, relating to, or
12 involving any rule which does not take effect (or the effec-
13 tiveness of which is terminated) because of enactment of
14 a joint resolution under section 802, that deadline is ex-
15 tended until the date 1 year after the date of the joint
16 resolution. Nothing in this subsection shall be construed
17 to affect a deadline merely by reason of the postponement
18 of a rule’s effective date under section 801(a).

19 “(b) The term ‘deadline’ means any date certain for
20 fulfilling any obligation or exercising any authority estab-
21 lished by or under any Federal statute or regulation, or
22 by or under any court order implementing any Federal
23 statute or regulation.

24 **“§ 804. Definitions**

25 “(a) For purposes of this chapter—

1 “(1) the term ‘Federal agency’ means any agen-
2 cy as that term is defined in section 551(1) (relating
3 to administrative procedure);

4 “(2) the term ‘major rule’ has the same mean-
5 ing given such term in section 621(5); and

6 “(3) the term ‘final rule’ means any final rule
7 or interim final rule.

8 “(b) As used in subsection (a)(3), the term ‘rule’ has
9 the meaning given such term in section 551, except that
10 such term does not include any rule of particular applica-
11 bility including a rule that approves or prescribes for the
12 future rates, wages, prices, services, or allowances there-
13 for, corporate or financial structures, reorganizations,
14 mergers, or acquisitions thereof, or accounting practices
15 or disclosures bearing on any of the foregoing or any rule
16 of agency organization, personnel, procedure, practice or
17 any routine matter.

18 **“§ 805. Judicial review**

19 “No determination, finding, action, or omission under
20 this chapter shall be subject to judicial review.

21 **“§ 806. Applicability; severability**

22 “(a) This chapter shall apply notwithstanding any
23 other provision of law.

24 “(b) If any provision of this chapter or the applica-
25 tion of any provision of this chapter to any person or cir-

1 cumstance, is held invalid, the application of such provi-
 2 sion to other persons or circumstances, and the remainder
 3 of this chapter, shall not be affected thereby.

4 **“§ 807. Exemption for monetary policy**

5 “Nothing in this chapter shall apply to rules that con-
 6 cern monetary policy proposed or implemented by the
 7 Board of Governors of the Federal Reserve System or the
 8 Federal Open Market Committee.”.

9 (c) Effective Date.—The amendment made by sub-
 10 section (b) shall take effect on the date of enactment of
 11 this Act.

12 (d) TECHNICAL AMENDMENT.—The table of chapters
 13 for part I of title 5, United States Code, is amended by
 14 inserting immediately after the item relating to chapter
 15 7 the following:

“8. Congressional Review of Agency Rulemaking 801”.

16 **SEC. 3007. REGULATORY ACCOUNTING STATEMENT.**

17 (a) DEFINITIONS.—For purposes of this section, the
 18 following definitions apply:

19 (1) MAJOR RULE.—The term “major rule” has
 20 the same meaning as defined in section 621(5)(A)(i)
 21 of title 5, United States Code. The term shall not
 22 include—

23 (A) administrative actions governed by sec-
 24 tions 556 and 557 of title 5, United States
 25 Code;

1 (B) regulations issued with respect to a
2 military or foreign affairs function of the Unit-
3 ed States or a statute implementing an inter-
4 national trade agreement; or

5 (C) regulations related to agency organiza-
6 tion, management, or personnel.

7 (2) AGENCY.—The term “agency” means any
8 executive department, military department, Govern-
9 ment corporation, Government controlled corpora-
10 tion, or other establishment in the executive branch
11 of the Government (including the Executive Office of
12 the President), or any independent regulatory agen-
13 cy, but shall not include—

14 (A) the General Accounting Office;

15 (B) the Federal Election Commission;

16 (C) the governments of the District of Co-
17 lumbia and of the territories and possessions of
18 the United States, and their various subdivi-
19 sions; or

20 (D) Government-owned contractor-oper-
21 ated facilities, including laboratories engaged in
22 national defense research and production activi-
23 ties.

24 (b) ACCOUNTING STATEMENT.—

25 (1) IN GENERAL.—

1 (A) The President shall be responsible for
2 implementing and administering the require-
3 ments of this section.

4 (B) Not later than June 1, 1997, and each
5 June 1 thereafter, the President shall prepare
6 and submit to Congress an accounting state-
7 ment that estimates the annual costs of major
8 rules and corresponding benefits in accordance
9 with this subsection.

10 (2) YEARS COVERED BY ACCOUNTING STATE-
11 MENT.—Each accounting statement shall cover, at a
12 minimum, the 5 fiscal years beginning on October 1
13 of the year in which the report is submitted and may
14 cover any fiscal year preceding such fiscal years for
15 purpose of revising previous estimates.

16 (3) TIMING AND PROCEDURES.—

17 (A) The President shall provide notice and
18 opportunity for comment for each accounting
19 statement. The President may delegate to an
20 agency the requirement to provide notice and
21 opportunity to comment for the portion of the
22 accounting statement relating to that agency.

23 (B) The President shall propose the first
24 accounting statement under this subsection not
25 later than 2 years after the date of enactment

1 of this Act and shall issue the first accounting
2 statement in final form not later than 3 years
3 after such effective date. Such statement shall
4 cover, at a minimum, each of the fiscal years
5 beginning after the date of enactment of this
6 Act.

7 (4) CONTENT OF ACCOUNTING STATEMENT.—

8 (A) Each accounting statement shall con-
9 tain estimates of costs and benefits with respect
10 to each fiscal year covered by the statement in
11 accordance with this paragraph. For each such
12 fiscal year for which estimates were made in a
13 previous accounting statement, the statement
14 shall revise those estimates and state the rea-
15 sons for the revisions.

16 (B)(i) An accounting statement shall esti-
17 mate the costs of major rules by setting forth,
18 for each year covered by the statement—

19 (I) the annual expenditure of national
20 economic resources for major rules,
21 grouped by regulatory program; and

22 (II) such other quantitative and quali-
23 tative measures of costs as the President
24 considers appropriate.

1 (ii) For purposes of the estimate of costs
2 in the accounting statement, national economic
3 resources shall include, and shall be listed
4 under, at least the following categories:

5 (I) Private sector costs.

6 (II) Federal sector costs.

7 (III) State and local government ad-
8 ministrative costs.

9 (C) An accounting statement shall estimate the
10 benefits of major rules by setting forth, for each
11 year covered by the statement, such quantitative and
12 qualitative measures of benefits as the President
13 considers appropriate. Any estimates of benefits con-
14 cerning reduction in health, safety, or environmental
15 risks shall present the most plausible level of risk
16 practical, along with a statement of the reasonable
17 degree of scientific certainty.

18 (c) ASSOCIATED REPORT TO CONGRESS.—

19 (1) IN GENERAL.—At the same time as the
20 President submits an accounting statement under
21 subsection (b), the President, acting through the Di-
22 rector of the Office of Management and Budget,
23 shall submit to Congress a report associated with
24 the accounting statement (hereinafter referred to as

1 an “associated report”). The associated report shall
2 contain, in accordance with this subsection—

3 (A) analyses of impacts; and

4 (B) recommendations for reform.

5 (2) ANALYSES OF IMPACTS.—The President
6 shall include in the associated report the following:

7 (A) Analyses prepared by the President of
8 the cumulative impact of major rules in Federal
9 regulatory programs covered in the accounting
10 statement on the following:

11 (i) The ability of State and local gov-
12 ernments to provide essential services, in-
13 cluding police, fire protection, and edu-
14 cation.

15 (ii) Small business.

16 (iii) Productivity.

17 (iv) Wages.

18 (v) Economic growth.

19 (vi) Technological innovation.

20 (vii) Consumer prices for goods and
21 services.

22 (viii) Such other factors considered
23 appropriate by the President.

24 (B) A summary of any independent analy-
25 ses of impacts prepared by persons commenting

1 during the comment period on the accounting
2 statement.

3 (3) RECOMMENDATIONS FOR REFORM.—The
4 President shall include in the associated report the
5 following:

6 (A) A summary of recommendations of the
7 President for reform or elimination of any Fed-
8 eral regulatory program or program element
9 that does not represent sound use of national
10 economic resources or otherwise is inefficient.

11 (B) A summary of any recommendations
12 for such reform or elimination of Federal regu-
13 latory programs or program elements prepared
14 by persons commenting during the comment pe-
15 riod on the accounting statement.

16 (d) GUIDANCE FROM OFFICE OF MANAGEMENT AND
17 BUDGET.—The Director of the Office of Management and
18 Budget shall, in consultation with the Council of Economic
19 Advisers, provide guidance to agencies—

20 (1) to standardize measures of costs and bene-
21 fits in accounting statements prepared pursuant to
22 sections 3 and 7 of this Act, including—

23 (A) detailed guidance on estimating the
24 costs and benefits of major rules; and

1 (B) general guidance on estimating the
2 costs and benefits of all other rules that do not
3 meet the thresholds for major rules; and
4 (2) to standardize the format of the accounting
5 statements.

6 (e) RECOMMENDATIONS FROM CONGRESSIONAL
7 BUDGET OFFICE.—After each accounting statement and
8 associated report submitted to Congress, the Director of
9 the Congressional Budget Office shall make recommenda-
10 tions to the President—

11 (1) for improving accounting statements pre-
12 pared pursuant to this section, including rec-
13 ommendations on level of detail and accuracy; and
14 (2) for improving associated reports prepared
15 pursuant to this section, including recommendations
16 on the quality of analysis.

17 (f) JUDICIAL REVIEW.—No requirements under this
18 section shall be subject to judicial review in any manner.

19 **SEC. 3008. STUDIES AND REPORTS.**

20 (a) RISK ASSESSMENTS.—The Administrative Con-
21 ference of the United States shall—

22 (1) develop and carry out an ongoing study of
23 the operation of the risk assessment requirements of
24 subchapter III of chapter 6 of title 5, United States
25 Code (as added by section 4 of this Act); and

1 (2) submit an annual report to the Congress on
2 the findings of the study.

3 (b) ADMINISTRATIVE PROCEDURE ACT.—Not later
4 than December 31, 1996, the Administrative Conference
5 of the United States shall—

6 (1) carry out a study of the operation of the
7 Administrative Procedure Act (as amended by sec-
8 tion 3 of this Act); and

9 (2) submit a report to the Congress on the find-
10 ings of the study, including proposals for revision, if
11 any.

12 **SEC. 3009. MISCELLANEOUS PROVISIONS.**

13 (a) EFFECTIVE DATE.—Except as otherwise pro-
14 vided, this Act and the amendments made by this Act shall
15 take effect on the date of enactment.

16 (b) SEVERABILITY.—If any provision of this Act, an
17 amendment made by this Act, or the application of such
18 provision or amendment to any person or circumstance is
19 held to be unconstitutional, the remainder of this Act, the
20 amendments made by this Act, and the application of the
21 provisions of such to any person or circumstance shall not
22 be affected thereby.

Passed the House of Representatives November 9,
1995.

Attest:

ROBIN H. CARLE,
Clerk.

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